

IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME XIII
October 3, 1990

NUMBER 7
Pages 605 to 680

CONTENTS IN THIS ISSUE

Pages 614 to 647 include ARC 1287A to ARC 1320A

ALL AGENCIES

Agency identification numbers 612

CITATION OF ADMINISTRATIVE RULES ... 607

COLLEGE STUDENT AID COMMISSION[283]

EDUCATION DEPARTMENT[281] "umbrella"

Notice, Stafford loan program, 10.24 ARC 1309A ... 614

Notice, Vocational-technical tuition grant program, 13.1(2) ARC 1307A 614

Notice, Osteopathic grant/subvention, amendments to ch 14 ARC 1301A 614

Notice, Occupational therapist loan payments, 19.1(3)"a" ARC 1305A 615

Notice, Nursing loan payments program, 21.1(2)"e" ARC 1306A 616

Notice, Access to education grant program, ch 28 ARC 1302A 616

Notice, Displaced workers financial aid, ch 29 ARC 1310A 617

Notice, Osteopathic forgivable loan program, ch 30 ARC 1303A 618

Filed, Iowa grant program, ch 27 ARC 1304A 642

COMMUNITY ACTION AGENCIES DIVISION[427]

HUMAN RIGHTS DEPARTMENT[421] "umbrella"

Filed Emergency, Affordable heating payment program pilot project, ch 11 rescinded ARC 1288A 637

CORRECTIONS DEPARTMENT[291]

Filed Emergency, Immediate family defined, 20.2 ARC 1313A 637

DELAY

Human Services Department[441], Inpatient psychiatric services, 85.8(2) to 85.8(5) ARC 1120A 648

EDUCATIONAL EXAMINERS BOARD[282]

EDUCATION DEPARTMENT[281] "umbrella"

Notice, Licensure, transfer and amend 281—chs 73 to 82 to 282—chs 14 to 20 ARC 1319A 620

Filed Emergency, Licensure, transfer and amend 281—chs 73 to 75 and 79 to 82 to 282—chs 14 to 20 ARC 1316A 637

EDUCATION DEPARTMENT[281]

Notice, Special education, 41.33(9) ARC 1318A 620

Filed Emergency, Special education, 41.33(9) ARC 1317A 639

Filed Emergency, Licensure, transfer 281—chs 73 to 75 and 79 to 82 to 282—chs 14 to 20 ARC 1315A ... 640

EXECUTIVE DEPARTMENT

Executive order number 39 650

Proclamation of disaster emergency 653

HUMAN SERVICES DEPARTMENT[441]

Notice, Recipient lock-in, 76.9(1) ARC 1314A 620

Notice, Drug for treatment of chronic schizophrenia, 78.1(2)"a," 78.28(1)"g" ARC 1290A 621

Delay, Inpatient psychiatric services, 85.8(2) to 85.8(5) ARC 1120A 648

LAW ENFORCEMENT ACADEMY[501]

Filed, Salvage vehicle examinations, 1.1, ch 11 ARC 1320A 643

LIVESTOCK HEALTH ADVISORY COUNCIL[521]

Filed, Recommendation, ch 1 ARC 1289A 644

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561] "umbrella"

Notice, Scuba diving, 61.2, 61.5(8)"b" ARC 1291A ... 623

Notice, Fishing regulations, 81.1, 81.2 ARC 1293A ... 623

Notice, Commercial fishing, amendments to ch 82 ARC 1292A 624

Notice, Wild turkey spring hunting, ch 98 ARC 1294A 625

Filed Emergency After Notice, Waterfowl and coot hunting, 91.1 to 91.4 ARC 1296A 640

Filed Emergency After Notice, Quail and gray (Hungarian) partridge seasons, 96.1(1), 96.2, 96.3 ARC 1295A 641

OBJECTION

Public Safety Department[661], Vehicle impoundment, 6.4(2)"d" ARC 1168A 649

PUBLIC HEARINGS

Summarized list 609

PUBLIC SAFETY DEPARTMENT[661]

Objection, Vehicle impoundment, 6.4(2)"d" ARC 1168A 649

REVENUE AND FINANCE DEPARTMENT[701]

Notice, Individual income and corporate income tax law changes, amendments to chs 42, 46, 52 ARC 1300A 627

Filed, Tax liens, 9.1, 9.6 ARC 1299A 645

Contents continued on page 607

PREFACE

The Iowa Administrative Bulletin is published in pamphlet form biweekly pursuant to Iowa Code Chapter 17A and contains Notices of Intended Action on rules, Filed and Filed Emergency rules by state agencies [continue to refer to General Information for drafting style and form].

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Economic Impact Statements to proposed rules and filed emergency rules; Objections filed by Administrative Rules Review Committee, Governor or the Attorney General; and Delay by the Committee of the effective date of filed rules; Regulatory Flexibility Analyses and Agenda for monthly Administrative Rules Review Committee meetings. Other "materials deemed fitting and proper by the Administrative Rules Review Committee," include summaries of Attorney General Opinions and Supreme Court Decisions.

The Bulletin may also contain Public Funds Interest Rates [453.6]; Workers' Compensation Rate Filings [515A.6(7)]; Usury [535.2(3)"a"]; and Agricultural Credit Corporation Maximum Loan Rates [535.12].

PLEASE NOTE: *Italics* indicate new material added to existing rules; ~~strike through~~ letters indicate deleted material.

The ARC number which appears before each agency heading is assigned by the Administrative Rules Coordinator for identification purposes and should always be used when referring to this item in correspondence and other communications.

The Iowa Administrative Code Supplement is also published every other week in loose-leaf form, pursuant to Iowa Code section 17A.6. It contains replacement pages for the Iowa Administrative Code. These replacement pages incorporate amendments to existing rules, new rules or emergency or temporary rules which have been filed with the administrative rules coordinator and published in the Bulletin.

PHYLLIS BARRY, Administrative Code Editor
DONNA WATERS, Administrative Code Assistant

Phone: (515) 281-3355
(515) 281-8157

SUBSCRIPTION INFORMATION

Iowa Administrative Bulletin

The Iowa Administrative Bulletin is sold as a separate publication and may be purchased by subscription or single copy. All subscriptions will expire on June 30 of each year. Subscriptions must be paid in advance and are prorated quarterly as follows:

First quarter	July 1, 1990, to June 30, 1991	\$199.00 plus \$7.96 sales tax
Second quarter	October 1, 1990, to June 30, 1991	\$149.15 plus \$5.96 sales tax
Third quarter	January 1, 1991, to June 30, 1991	\$103.35 plus \$4.13 sales tax
Fourth quarter	April 1, 1991, to June 30, 1991	\$ 49.75 plus \$1.99 sales tax

Single copies may be purchased for \$6.90 plus \$0.27 tax. Back issues may be purchased if the issues are available.

Iowa Administrative Code

The Iowa Administrative Code and Supplements are sold in complete sets and subscription basis only. All subscriptions for the Supplement (replacement pages) must be for the complete year and will expire on June 30 of each year.

Prices for the Iowa Administrative Code and its Supplements are as follows:

Iowa Administrative Code - \$906.30 plus \$36.25 sales tax

(Price includes 16 volumes of rules and index, plus a one-year subscription to the Code Supplement and the Iowa Administrative Bulletin. Additional or replacement binders can be purchased for \$3.90 plus \$0.16 tax.)

Iowa Administrative Code Supplement - \$315.50 plus \$12.61 sales tax

(Subscription expires June 30, 1991)

All checks should be made payable to the Iowa State Printing Division. Send all inquiries and subscription orders to:

**Iowa State Printing Division
Grimes State Office Building
Des Moines, IA 50319
Phone: (515) 281-8796**

REVENUE AND FINANCE DEPARTMENT[701]
(cont'd)
 Filed, Corporation taxes, amendments to chs 52, 53,
 59 ARC 1298A 645
 Filed, Minimum tax computation, 52.5(4)
 ARC 1297A 645
SUPREME COURT
 Decisions summarized 655
TRANSPORTATION DEPARTMENT[761]
 Notice, Iowa airport registration, 720.10(2)"b,"
 720.10(3)"a" ARC 1287A 633

USURY
 Notice 636
UTILITIES DIVISION[199]
COMMERCE DEPARTMENT[181] "umbrella"
 Notice Amended and Notice Terminated, Complaint
 procedures, 19.4(1), 20.4(2), 21.4(1), 22.4(1)
 ARC 1312A 634
 Notice Amended, Nonutility service, ch 34
 ARC 1308A 635
 Filed, Complaint procedures, 6.5(1), 19.4(1)"i,"
 20.4(2), 21.4(1)"f," 22.4(1)"b" ARC 1311A 646

CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

- 441 IAC 79 (Chapter)
- 441 IAC 79.1(249A) (Rule)
- 441 IAC 79.1(1) (Subrule)
- 441 IAC 79.1(1)"a" (Paragraph)
- 441 IAC 79.1(1)"a"(1) (Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

Schedule for Rule Making 1990

FILING DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Jan. 5	Jan. 24	Feb. 13	Feb. 28	Mar. 21	Apr. 25	July 23
Jan. 19	Feb. 7	Feb. 27	Mar. 14	Apr. 4	May 9	Aug. 6
Feb. 2	Feb. 21	Mar. 13	Mar. 28	Apr. 18	May 23	Aug. 20
Feb. 16	Mar. 7	Mar. 27	Apr. 11	May 2	June 6	Sep. 3
Mar. 2	Mar. 21	Apr. 10	Apr. 25	May 16	June 20	Sep. 17
Mar. 16	Apr. 4	Apr. 24	May 9	May 30	July 4	Oct. 1
Mar. 30	Apr. 18	May 8	May 23	June 13	July 18	Oct. 15
Apr. 13	May 2	May 22	June 6	June 27	Aug. 1	Oct. 29
Apr. 27	May 16	June 5	June 20	July 11	Aug. 15	Nov. 12
May 11	May 30	June 19	July 4	July 25	Aug. 29	Nov. 26
May 25	June 13	July 3	July 18	Aug. 8	Sep. 12	Dec. 10
June 8	June 27	July 17	Aug. 1	Aug. 22	Sep. 26	Dec. 24
June 22	July 11	July 31	Aug. 15	Sep. 5	Oct. 10	Jan. 7 '91
July 6	July 25	Aug. 14	Aug. 29	Sep. 19	Oct. 24	Jan. 21 '91
July 20	Aug. 8	Aug. 28	Sep. 12	Oct. 3	Nov. 7	Feb. 4 '91
Aug. 3	Aug. 22	Sep. 11	Sep. 26	Oct. 17	Nov. 21	Feb. 18 '91
Aug. 17	Sep. 5	Sep. 25	Oct. 10	Oct. 31	Dec. 5	Mar. 4 '91
Aug. 31	Sep. 19	Oct. 9	Oct. 24	Nov. 14	Dec. 19	Mar. 18 '91
Sep. 14	Oct. 3	Oct. 23	Nov. 7	Nov. 28	Jan. 2 '91	Apr. 1 '91
Sep. 28	Oct. 17	Nov. 6	Nov. 21	Dec. 12	Jan. 16 '91	Apr. 15 '91
Oct. 12	Oct. 31	Nov. 20	Dec. 5	Dec. 26	Jan. 30 '91	Apr. 29 '91
Oct. 26	Nov. 14	Dec. 4	Dec. 19	Jan. 9 '91	Feb. 13 '91	May 13 '91
Nov. 9	Nov. 28	Dec. 18	Jan. 2 '91	Jan. 23 '91	Feb. 27 '91	May 27 '91
Nov. 23	Dec. 12	Jan. 1 '91	Jan. 16 '91	Feb. 6 '91	Mar. 13 '91	June 10 '91
Dec. 7	Dec. 26	Jan. 15 '91	Jan. 30 '91	Feb. 20 '91	Mar. 27 '91	June 24 '91
Dec. 21	Jan. 9 '91	Jan. 29 '91	Feb. 13 '91	Mar. 6 '91	Apr. 10 '91	July 8 '91

20 days from the publication date is the **minimum** date for a public hearing or cutting off public comment.

35 days from the publication date is the **earliest** possible date for the agency to consider a noticed rule for adoption. It is the regular effective date for an adopted rule.

180 days See 17A.4(1)"b." If the agency does not adopt rules within this time frame, the Notice should be terminated.

PRINTING SCHEDULE FOR IAB		
ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
8	Friday, September 28, 1990	October 17, 1990
9	Friday, October 12, 1990	October 31, 1990
10	Friday, October 26, 1990	November 14, 1990

NOTICE

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

To All Agencies:

The Administrative Rules Review Committee voted to request that Agencies comply with Iowa Code section 17A.4(1)"b" by allowing the opportunity for oral presentation (hearing) to be held at least twenty days after publication of Notice in the Iowa Administrative Bulletin.

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
CREDIT UNION DIVISION[189] Maintenance of allowance for loan losses account, new ch 18 IAB 9/19/90 ARC 1263A	Division Office 200 East Grand Ave. Suite 370 Des Moines, Iowa	October 9, 1990 10 a.m.
EDUCATIONAL EXAMINERS BOARD[282] Licensure, chs 14 to 20 IAB 10/3/90 ARC 1319A (See also ARC 1316A herein)	State Board Room Grimes State Office Bldg. Des Moines, Iowa	October 25, 1990 9 a.m.
EDUCATION DEPARTMENT[281] Special education— administrative dismissal of appeal, 41.33(9) IAB 10/3/90 ARC 1318A (See also ARC 1317A herein)	Conference Room—3rd Floor N. Grimes State Office Bldg. Des Moines, Iowa	October 23, 1990 1 p.m.
ENVIRONMENTAL PROTECTION COMMISSION[567] Water quality standards, 61.3(5)"e" IAB 9/19/90 ARC 1269A	Grinnell Library 926 Broad Street Grinnell, Iowa Le Mars Library 46 1st Street SW Le Mars, Iowa Manning Library 320 Main Street Manning, Iowa Chamber of Commerce Hall 9 1st Street SW Oelwein, Iowa ISU Extension Office 113 A Ave. West Oskaloosa, Iowa Stanwood Library 110 East Broadway Stanwood, Iowa	October 11, 1990 7 p.m. October 10, 1990 1 p.m. October 10, 1990 7 p.m. October 9, 1990 7 p.m. October 11, 1990 1 p.m. October 9, 1990 1 p.m.
HUMAN SERVICES DEPARTMENT[441] Medicaid coverage of clozapine, 78.1(2)"a"(2), 78.28(1)"g" IAB 10/3/90 ARC 1290A	District Office Conference Room—6th Floor 221 4th Ave., S.E. Cedar Rapids, Iowa District Office—Lower Level 417 E. Kanessville Blvd. Council Bluffs, Iowa District Office Conference Room—5th Floor 428 Western Davenport, Iowa Conference Room 100 City View Plaza 1200 University Des Moines, Iowa	October 25, 1990 10 a.m. October 25, 1990 10 a.m. October 24, 1990 10 a.m. October 24, 1990 10 a.m.

HUMAN SERVICES DEPARTMENT[441] (cont'd)

District Office Mohawk Square 22 N. Georgia Ave. Mason City, Iowa	October 24, 1990 10 a.m.
District Office Conference Room—5th Floor 226 West Main Ottumwa, Iowa	October 24, 1990 10 a.m.
District Office Suite 624 507 7th St. Sioux City, Iowa	October 25, 1990 1 p.m.
District Office Pinecrest 1407 Independence Ave. Waterloo, Iowa	October 25, 1990 10 a.m.

INSPECTIONS AND APPEALS DEPARTMENT[481]

Iowa targeted small business program, ch 25 IAB 9/19/90 ARC 1257A	Conference Room Third Floor — Side 2 Lucas State Office Bldg. Des Moines, Iowa	October 9, 1990 11 a.m.
Health care facilities, amendments to chs 56, 57, 58, 59, 62, 63, 64 IAB 9/19/90 ARC 1256A	Conference Room Third Floor — Side 2 Lucas State Office Bldg. Des Moines, Iowa	October 9, 1990 10 a.m.

NATURAL RESOURCE COMMISSION[571]

Scuba diving in state park lakes, 61.2, 61.5(8)"b" IAB 10/3/90 ARC 1291A	Conference Room Fifth Floor East Wallace State Office Bldg. Des Moines, Iowa	November 20, 1990 1 p.m.
Fishing regulations, 81.1, 81.2 IAB 10/3/90 ARC 1293A	Conference Room Fourth Floor Wallace State Office Bldg. Des Moines, Iowa	October 24, 1990 1 p.m.
Commercial fishing, 82.1(1), 82.2(7) IAB 10/3/90 ARC 1292A	Community Hall 205 South Main Council Bluffs, Iowa	October 29, 1990 7 p.m.
Wild turkey spring hunting, ch 98 IAB 10/3/90 ARC 1294A	Conference Room Fourth Floor Wallace State Office Bldg. Des Moines, Iowa	October 30, 1990 10 a.m.

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

Fees of neutrals, 1.8, 7.2 IAB 9/19/90 ARC 1260A	Hearing Room — 2nd Floor 507 Tenth Street Des Moines, Iowa	October 9, 1990 10 a.m.
--	--	----------------------------

PUBLIC SAFETY DEPARTMENT[661]

Closed circuit videotape surveillance systems on excursion gambling boats, new ch 23 IAB 9/19/90 ARC 1264A	Conference Room Third Floor — West Half Wallace State Office Bldg. Des Moines, Iowa	October 11, 1990 10:30 a.m.
Marijuana eradication procedures, new ch 28 IAB 9/19/90 ARC 1247A	Conference Room Third Floor — West Half Wallace State Office Bldg. Des Moines, Iowa	October 11, 1990 9:30 a.m.

TRANSPORTATION DEPARTMENT[761]

General requirements and covenants for highway and bridge construction, 125.1 IAB 9/19/90 ARC 1255A	Department of Transportation Complex 800 Lincoln Way Ames, Iowa	November 6, 1990
Motor vehicle equipment—windshields, 450.7 IAB 9/5/90 ARC 1201A (See also ARC 1200A)	Department of Transportation Complex 800 Lincoln Way Ames, Iowa	October 23, 1990
Regulations applicable to carriers, 520.1, 520.4 IAB 9/5/90 ARC 1202A (See also ARC 1203A)	Department of Transportation Complex 800 Lincoln Way Ames, Iowa	October 23, 1990
Iowa airport registration, 720.10(2)"b," 720.10(3)"a" IAB 10/3/90 ARC 1287A	Department of Transportation Complex 800 Lincoln Way Ames, Iowa	December 4, 1990

UTILITIES DIVISION[199]

Energy efficiency plans, 17.9, 19.11(2), 20.13(3), new ch 35 IAB 9/19/90 ARC 1281A	Hearing Room — 1st Floor Lucas State Office Bldg. Des Moines, Iowa	October 29, 1990 10 a.m.
Complaint procedures, 19.4(1)"i," 20.4(2), 21.4(1)"f," 22.4(1)"b" IAB 10/3/90 ARC 1312A	Hearing Room—1st Floor Lucas State Office Bldg. Des Moines, Iowa	November 19, 1990 10 a.m.
Nonutility service, new ch 34 IAB 10/3/90 ARC 1308A (See also IAB 8/8/90 ARC 1153A)	Hearing Room — 1st Floor Lucas State Office Bldg. Des Moines, Iowa	October 25, 1990 10 a.m.

WALLACE TECHNOLOGY TRANSFER FOUNDATION[851]

Purpose and organization, industrial technology access program, technology services support activities, new chs 1, 2, 3, 4, 10, 11 IAB 9/19/90 ARC 1267A	IDED Main Conference Room 200 East Grand Ave. Des Moines, Iowa	October 10, 1990 10 a.m.
---	--	-----------------------------

AGENCY IDENTIFICATION NUMBERS

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas”.

Other autonomous agencies which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in lowercase type at the left-hand margin, e.g., Beef Industry Council, Iowa [101].

Implementation of reorganization is continuing and the following list will be updated as changes occur:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Agricultural Development Authority[25]

Soil Conservation Division[27]

ATTORNEY GENERAL[61]

AUDITOR OF STATE[81]

Beef Industry Council, Iowa[101]

Blind, Department For The[111]

CAMPAIGN FINANCE DISCLOSURE COMMISSION[121]

CITIZENS' AIDE[141]

CIVIL RIGHTS COMMISSION[161]

COMMERCE DEPARTMENT[181]

Alcoholic Beverages Division[185]

Banking Division[187]

Credit Union Division[189]

Insurance Division[191]

Professional Licensing and Regulation Division[193]

Accountancy Examining Board[193A]

Architectural Examining Board[193B]

Engineering and Land Surveying Examining Board[193C]

Landscape Architectural Examining Board[193D]

Real Estate Commission[193E]

Savings and Loan Division[197]

Utilities Division[199]

CORRECTIONS DEPARTMENT[201]

Parole Board[205]

CULTURAL AFFAIRS DEPARTMENT[221]

Historical Division[223]

Library Division[224]

Public Broadcasting Division[225]

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

City Development Board[263]

Iowa Finance Authority[265]

High Technology Council[267]

EDUCATION DEPARTMENT[281]

Educational Examiners Board[282]

College Aid Commission[283]

Higher Education Loan Authority[284]

Iowa Advance Funding Authority[285]

School Budget Review Committee[289]

Egg Council[301]

ELDER AFFAIRS DEPARTMENT[321]

EMPLOYMENT SERVICES DEPARTMENT[341]

Industrial Services Division[343]

Job Service Division[345]

Labor Services Division[347]

EXECUTIVE COUNCIL[361] Fair Board[371]	PUBLIC DEFENSE DEPARTMENT[601] Disaster Services Division[607]
GENERAL SERVICES DEPARTMENT[401] Health Data Commission[411]	PUBLIC EMPLOYMENT RELATIONS BOARD[621]
HUMAN RIGHTS DEPARTMENT[421] Children, Youth, and Families Division[425] Community Action Agencies Division[427] Deaf Services, Division of[429] Persons With Disabilities Division[431] Spanish-Speaking People Division[433] Status of Women Division[435]	PUBLIC HEALTH DEPARTMENT[641] Substance Abuse Commission[643] Professional Licensure Division[645] Dental Examiners[650] Medical Examiners[653] Nursing Board[655] Pharmacy Examiners[657]
HUMAN SERVICES DEPARTMENT[441]	PUBLIC SAFETY DEPARTMENT[661] Records Commission[671]
INSPECTIONS AND APPEALS DEPARTMENT[481] Employment Appeal Board[486] Foster Care Review Board[489] Racing and Gaming Commission[491]	REGENTS BOARD[681] Archaeologist[685]
LAW ENFORCEMENT ACADEMY[501] Livestock Health Advisory Council[521]	REVENUE AND FINANCE DEPARTMENT[701] Lottery Division[705]
MANAGEMENT DEPARTMENT[541] Appeal Board, State[543] City Finance Committee[545] County Finance Committee[547]	SECRETARY OF STATE[721] Sheep and Wool Promotion Board, Iowa[741]
Narcotics Enforcement Advisory Council[551]	TRANSPORTATION DEPARTMENT[761] Railway Finance Authority, Iowa[765]
NATURAL RESOURCES DEPARTMENT[561] Energy and Geological Resources[565] Environmental Protection Commission[567] Natural Resource Commission[571] Preserves, State Advisory Board[575]	TREASURER OF STATE[781] Uniform State Laws Commission[791] Veterinary Medicine Board[811] Voter Registration Commission[821]
PERSONNEL DEPARTMENT[581] Petroleum Underground Storage Tank Fund Board, Iowa Comprehensive[591]	

REORGANIZATION—NOT IMPLEMENTED

Agencies listed below are identified in the Iowa Administrative Code with white tabs. These agencies have not yet implemented government reorganization.

Citizens' Aide[210]	Library Department[560]
City Development Board[220]	Prison Industries Advisory Board[635]
Corrections Department[291]	Product Development Corporation[636]
Executive Council[420]	Records Commission[710]
Iowa Advance Funding Authority[515]	Veterans Affairs[841]
Iowa Finance Authority[524]	

ARC 1309A

COLLEGE STUDENT AID
COMMISSION*[283]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b".

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission proposes to amend Chapter 10, Iowa Stafford Loan Program,"Iowa Administrative Code.

The proposed amendment reduces the guarantee fee charged to borrowers from 1.5 percent of the loan amount to 1 percent of the amount.

Interested persons may submit comments orally or in writing to the Executive Director, College Student Aid Commission, 201 Jewett Building, Des Moines, Iowa 50309, telephone (515)281-3501 on or before November 1, 1990.

This rule is intended to implement Iowa Code section 261.3.

Amend rule 283—10.24(261), first unnumbered paragraph, as follows:

The guarantee fee for an Iowa ~~Guaranteed Stafford Student~~ Loan with a period of instruction beginning prior to May 1, 1987, is three-fourths of one percent (.75%) per year calculated for the period between disbursement and ten months following a student's anticipated completion date. The guarantee fee for an Iowa ~~Guaranteed Stafford Student~~ Loan for a period of instruction beginning on or after May 1, 1987, and prior to January 1, 1991, is one and one-half percent (1.5%) of the loan amount. *The guarantee fee for an Iowa Stafford Loan for a period of instruction beginning on or after January 1, 1991, is one percent (1%) of the loan amount.* The amount of the guarantee fee is computed by the ICAC and reported to a lender on the Notice of Loan Guarantee and Disclosure Statement. Assistance with calculation of guarantee fees is available from the College Student Aid Commission office.

This rule is intended to implement Iowa Code section 261.3.

ARC 1307A

COLLEGE STUDENT AID
COMMISSION[283]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b".

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission proposes to amend Chapter 13, "Iowa Vocational-Technical Tuition Grant Program," Iowa Administrative Code.

The proposed amendments define student eligibility under this program.

Interested persons may submit comments orally or in writing to the Executive Director, College Student Aid Commission, 201 Jewett Building, Des Moines, Iowa 50309, telephone, (515)281-3501 on or before November 1, 1990.

This rule is intended to implement Iowa Code Supplement section 261.17.

Amend subrule 13.1(2) as follows:

13.1(2) Iowa residency- Student eligibility.

a. *A recipient must be an Iowa resident.* The criteria used by the state board of regents to determine residency for tuition purposes, IAC 681—1.4(262), are adopted for this program.

b. *A recipient may receive moneys under this program for not more than four semesters, eight quarters, or the equivalent of two full years of study.*

c. *A recipient may again be eligible for moneys under 13.1(2)"b" if the recipient resumes study after at least a two-year absence, except for course work for which credit was previously received.*

ARC 1301A

COLLEGE STUDENT AID
COMMISSION[283]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b".

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission proposes to amend Chapter 14, "Osteopathic Subvention Program," Iowa Administrative Code.

The proposed amendments outline changes in the program which were enacted by the 1990 Session of the General Assembly and provide clarification on previous rules.

Interested persons may submit comments orally or in writing to the Executive Director, College Student Aid

*Renamed from College Aid Commission to College Student Aid Commission pursuant to 1990 Iowa Acts, Senate File 2410[ch 1253], section 122.

COLLEGE STUDENT AID COMMISSION[283] (cont'd)

Commission, 201 Jewett Building, Des Moines, Iowa 50309, telephone (515)281-3501, on or before November 1, 1990.

This rule is intended to implement Iowa Code Supplement section 261.18.

ITEM 1. Amend 283—Chapter 14, title, to read as follows:

CHAPTER 14

OSTEOPATHIC GRANT/SUBVENTION PROGRAM

ITEM 2. Amend rule 283—14.1(261), catchwords as follows:

283—14.1(261) A state-supported grant and subvention program to be used for admission and education of Iowa residents at the College of Osteopathic Medicine and Surgery Health Sciences.

ITEM 3. Rescind subrule 14.1(3) in its entirety and insert in lieu thereof the following:

14.1(3) Student eligibility. A recipient must be an Iowa resident who is enrolled in a program at the University of Osteopathic Medicine and Health Sciences leading to a degree in osteopathic medicine. Recipients must have enrolled as a first-year student after July 1, 1986, but before July 1, 1990. The criteria used by the state board of regents to determine residency for tuition purposes, 681 IAC 1.4(262), are adopted to determine residency for this program.

14.1(4) Award limits.

a. The annual amount of the grant to an eligible osteopathic student is set by legislation. The current amount is \$3,000.

b. If, after crediting the amount of the grant to the student's tuition and fees, a credit balance remains, the institution may distribute the grant balance to the student, who may use the proceeds for other bona fide education expenses such as books and equipment.

14.1(5) Extent of grant. Students who are repeating an entire year's academic program and who are not charged tuition and fees for that program will not be eligible for a grant during that year.

14.1(6) Notice of award. The commission, on receipt of the university's certified roster, will notify each eligible student of the student's osteopathic grant award.

14.1(7) Restriction. A student who is in default on a Stafford Loan, SLS Loan, or a Perkins/National Direct/National Defense Student Loan or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for assistance under the osteopathic grant program. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in appeal under the procedure set forth in 283—Chapter 3, Iowa Administrative Code.

14.1(8) Payment of grant funds.

a. The registrar of the university shall provide to the commission, by September 15 and January 15, a certified roster of enrolled Iowa residents. The roster will contain the names and addresses of all students, by class, and shall indicate which students are residents of Iowa.

b. The commission shall make the grant payment to the university within ten days following receipt of the required enrollment certification.

c. Each student claiming Iowa residency shall complete a residency questionnaire. University officials shall initially review each questionnaire and approve or

disapprove residency status in accordance with the criteria used by the state board of regents, 681 IAC 1.4(262).

14.1(9) Payment of subvention funds.

a. Subvention funds are provided by the state to the university for the admission and education of Iowa residents enrolled in the college of osteopathic medicine.

b. The payment of subvention funds will be made in two equal installments ten days following the receipt from the university of a certified roster of enrolled students.

c. The roster required in paragraph 14.1(8)"a" is also to be used for determining the subvention payment.

d. The commission shall determine a subvention amount per resident student by dividing the funds appropriated for the subvention program by a number equal to that year's required percentage of the total students enrolled, as specified in legislation. If fewer than the required percentage of Iowa residents are enrolled, the commission shall deduct from the funds appropriated an amount equal to the subvention amount per resident student multiplied by the number of students required to equal the required percentage of the total students enrolled as stated in legislation.

e. No payment of the subvention will be made until the university has provided the commission a certified copy of its annual audit.

ARC 1305A

COLLEGE STUDENT AID
COMMISSION[283]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b".

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission proposes to amend Chapter 19, "Occupational Therapist Loan Payments Program," Iowa Administrative Code.

The proposed amendment redefines funds allocations if funds are insufficient to repay loans to all qualified applicants.

Interested persons may submit comments orally or in writing to the Executive Director, College Student Aid Commission, 201 Jewett Building, Des Moines, Iowa 50309, telephone, (515)281-3501, on or before November 1, 1990.

This rule is intended to implement Iowa Code sections 261.2(10) and 261.46.

Amend subrule 19.1(3) paragraph "a," as follows:

a. Priority will be given to eligible therapists who have entered into an agreement with the commission while completing their occupational therapist program and

COLLEGE STUDENT AID COMMISSION[283] (cont'd)

who have returned to Iowa to begin their careers. Requests for loan repayment received before the designated deadline will be honored to the extent that funds are available. ~~A lottery or other priority plan approved by the commission will determine awards if~~ *If funds are insufficient to honor all requests, the commission shall repay loans to students demonstrating the greatest financial need.*

ARC 1306A

COLLEGE STUDENT AID
COMMISSION[283]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b".

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission proposes to amend Chapter 21, "Iowa Nursing Loan Payments Program," Iowa Administrative Code.

The proposed amendment clarifies funds allocations if funds are insufficient to repay loans to all qualified applicants.

Interested persons may submit comments orally or in writing to the Executive Director, College Student Aid Commission, 201 Jewett Building, Des Moines, Iowa 50309, telephone (515)281-3501, on or before November 1, 1990.

This rule is intended to implement Iowa Code supplement section 261.47.

Amend subrule 21.1(2), paragraph "e," as follows:

e. If funds are insufficient to repay loans to all qualified applicants, priority shall be given to repayment of debt under the Iowa guaranteed loan program moneys appropriated for the program shall be used to repay loans to qualified applicants demonstrating the greatest financial need.

ARC 1302A

COLLEGE STUDENT AID
COMMISSION[283]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b".

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of 1990 Iowa Acts, Senate File 2423 [ch 1272], section 65, the College Student Aid Commission proposes to adopt a new Chapter 28, "Access to Education Grant Program," Iowa Administrative Code.

The new chapter will summarize the procedures to be followed in the administration of the Access to Education Grant.

Interested persons may submit comments orally or in writing to the Executive Director, College Student Aid Commission, 201 Jewett Building, Des Moines, Iowa 50309, telephone (515) 281-3501, on or before November 1, 1990.

This rule is intended to implement Iowa Code chapter 261 as amended by 1990 Iowa Acts, Senate File 2423 [ch 1272], section 65.

The following new chapter is proposed:

CHAPTER 28

ACCESS TO EDUCATION GRANT PROGRAM

283—28.1(261) State-supported grants. The access to education grant program is a state-supported and administered grant based on financial need to Iowa residents who attend community colleges in Iowa.

28.1(1) Definitions. As used in this chapter:

"Community college" means any public, two-year institution of higher education as defined in Iowa Code section 280A.2, subsection 3.

"Full-time resident student" means an individual resident of Iowa who is enrolled at an Iowa community college in a course of study including at least 12 semester hours or the trimester or quarter equivalent of 12 semester hours. "Course of study" does not include correspondence courses.

"Pell grant" means the federally funded and operated need-based entitlement grant program available to undergraduate students.

"Qualified student" means a resident student who has a federal Pell grant index up to 20 percent over the index cutoff for a Pell grant, who is making satisfactory progress toward graduation, and who is not receiving a Pell grant.

28.1(2) Student eligibility. A recipient must be an Iowa resident who is enrolled for at least 12 semester hours or the trimester or quarter equivalent in a program leading to a degree, diploma, or certificate from an Iowa community college. The criteria used by the state board of regents to determine residency for tuition purposes, 681 IAC 1.4(262), are adopted for this program.

28.1(3) Self-supporting applicants. For purposes of determining financial independence, the commission has adopted the definition in use by the U.S. Department of Education for the federally funded student assistance programs. Self-supporting applicants must certify their status on the financial aid form and supply any required documentation to the educational institution.

28.1(4) Award limits and eligibility requirements.

a. A grant may be awarded to any qualified person who is accepted for admission or is enrolled for at least 12 semester hours or the trimester or quarter equivalent.

b. The annual amount of the grant to a full-time student shall not exceed a student's financial need or \$250, whichever is less.

c. Grants shall be awarded on an annual basis and shall be credited by the institution against the student's tuition, fees, and room and board charges, at the beginning of each term in equal installments upon certification that the eligible student is enrolled.

d. If, after crediting the amount of the grant to the student's tuition, fees, and, if applicable, room and board charges, a credit balance remains, the institution may distribute the grant balance to the student who may use

COLLEGE STUDENT AID COMMISSION[283] (cont'd)

the proceeds for other bona fide education expenses such as books, equipment, and transportation.

e. If a student receiving a grant under the program discontinues attendance before the end of any academic period, but after receiving payment of grant funds for the academic period, the pro rata share of any refund due the student applicable to the state grant shall be paid by the institution to the state.

28.1(5) Extent of grant. A qualified full-time student may receive grants for not more than four semesters of undergraduate study or the trimester or quarter equivalent.

28.1(6) Application process. Eligible students shall apply for this grant through the use of an approved financial aid form, which uses the federally accepted method of needs analysis. The application form must be received by the need analysis processor by the deadline date specified by the commission.

28.1(7) Full year of study. For purposes of this program, the commission has defined full year of study as either three quarters or two semesters. Grant payments are prorated according to this definition.

28.1(8) Priority for grants. If funds are insufficient to pay all approved grants, grants will be offered first to those eligible applicants meeting the commission's priority deadline.

28.1(9) Award notification. A grant recipient is notified of the award by the educational institution to which application is made. The institution shall clearly identify the access to education grant on the student's aid award notice. The institution is responsible for completing necessary verification and for coordinating other aid to ensure compliance with student eligibility requirements and allowable award amounts. The institution reports changes of student eligibility to the commission.

28.1(10) Award transfers and adjustments.

a. Awards may be transferred among eligible institution(s).

b. Recipients are responsible for promptly notifying the appropriate institution of any change in enrollment or financial situation. The educational institution will make necessary changes and notify the commission.

28.1(11) Restriction. A student who is in default on a Stafford Loan, SLS Loan, or a Perkins/National Direct/National Defense Student Loan or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for assistance under the Iowa grant program. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in appeal under the procedure set forth in 283—Chapter 3, Iowa Administrative Code.

28.1(12) Institutional reporting. The commission will monitor the program according to this chapter and will require participating postsecondary institutions that receive funds for enrolled students to furnish any information necessary for the implementation or administration of the program.

This rule is intended to implement Iowa Code chapter 261 as amended by 1990 Iowa Acts, Senate File 2423, section 65.

ARC 1310A**COLLEGE STUDENT AID
COMMISSION[283]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b".

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 261.2 as amended by 1990 Iowa Acts, Senate File 2423[ch 1272], section 45, the College Student Aid Commission proposes to adopt a new Chapter 29, "Displaced Workers Financial Aid Program," Iowa Administrative Code.

The proposed chapter will summarize the procedures to be followed in the administration of the displaced workers program.

Interested persons may submit comments orally or in writing to the Executive Director, College Student Aid Commission, 201 Jewett Building, Des Moines, Iowa 50309, telephone (515)281-3501, on or before November 1, 1990.

This rule is intended to implement Iowa Code chapter 261 as amended by 1990 Iowa Acts, Senate File 2423 [ch 1272], section 46.

The following new chapter is proposed:

**CHAPTER 29
DISPLACED WORKERS
FINANCIAL AID PROGRAM**

283—29.1(261) State-supported grants for displaced workers. The displaced workers financial aid program is designed to provide aid for attendance of displaced workers at Iowa-based programs, colleges, or universities.

29.1(1) Definitions. As used in this chapter:

"Displaced worker" means an Iowa resident who was formerly employed by a hog slaughtering operation which employed 500 or more workers at any time during the six-month period preceding the date on which the employer ceased slaughtering operations, and the individual became unemployed as a result of the employer's ceasing operations between January 1, 1989, and December 31, 1990. The criteria used by the state board of regents to determine residency for tuition purposes, 681 IAC 1.4(262), are adopted to determine residency for this program.

"Eligible institution" means an Iowa-based program, college, or university which is an eligible participant for federal loan programs under Part B of Title IV of the Higher Education Act of 1965, as amended.

"Financial need" means the difference between the student's financial resources, excluding income received from employment by a hog slaughtering operation which ceased operations between January 1, 1989, and December 31, 1990, and the anticipated cost of attendance at the Iowa-based program, college, or university, as determined by a completed financial statement. Any displaced worker making application for financial aid under this program shall apply for, and accept, any student aid or job training program aid available to the displaced worker. The application form must be received

COLLEGE STUDENT AID COMMISSION[283] (cont'd)

by the needs analysis processor by the deadline date established by the commission.

"Full-time student" means an individual resident of Iowa who is enrolled at an eligible institution in a course of study including at least 12 semester hours, or the trimester or quarter equivalent. "Course of study" does not include correspondence or noncredit remedial courses.

"Part-time student" means a displaced worker who is enrolled at an eligible institution in a course of study including at least three semester hours, or the trimester or quarter equivalent of three semester hours. "Course of study" does not include correspondence course or noncredit remedial courses.

29.1(2) Student eligibility.

a. A recipient must be a displaced worker who is accepted for admission and enrolled as a part-time or full-time student in a program in an eligible Iowa institution.

b. A recipient must register as a displaced worker with a displaced worker center and have requested assistance through the Job Training Partnership Act (JTPA).

29.1(3) Award limits and eligibility requirements.

a. A grant may be awarded to any eligible student who demonstrates financial need.

b. The annual amount of the grant to a full-time student shall not exceed the lesser of the tuition and fees at the eligible institution in which the individual is enrolled or the highest tuition at any area community college.

c. The maximum amount of a grant to a part-time student shall be prorated by taking the maximum full-time grant amount, dividing that amount by 24 semester hours, or the trimester or quarter equivalent, and taking that amount times the number of hours the student is enrolled.

d. Grants shall be awarded on an annual basis, which includes summer terms, and shall be credited by the institution against the student's tuition, fees, and room and board charges at the beginning of each term in equal installments upon certification that the student is enrolled.

e. If, after crediting the amount of the grant to the student tuition, fees, and, if applicable, room and board charges, a credit balance remains, the institution may distribute the grant balance to the student who may use the proceeds for other bona fide education expenses such as books, equipment, and transportation.

f. If a student receiving a grant under the program discontinues attendance before the end of any academic period, but after receiving payment of grant funds for the academic period, the pro rata share of any refund due the student applicable to the state grant, up to the amount of any payments made by the state, shall be remitted by the institution to the commission.

29.1(4) Extent of grant. If funds are available, a qualified full-time student may receive grants for up to eight semesters of undergraduate study or the trimester or quarter equivalent. If funds are available, a qualified part-time student may receive grants for not more than 16 semesters of undergraduate study or the trimester or quarter equivalent.

29.1(5) Application process.

a. Eligible students shall apply for all forms of federal, state, and institutional financial aid through the use of an approved financial aid application which uses the federally accepted method of needs analysis.

b. The commission shall contact all known eligible displaced workers with a specialized application. To be eligible, the student shall complete and return the application to the institution's financial aid officer by the date specified by the commission.

c. A student shall accept all federal, state, and job training assistance before being considered for grants under this program.

29.1(6) Priority for grants.

a. If funds are insufficient to pay all approved grants, the amount of the maximum grant will be reduced to enable all eligible applicants to receive an award.

b. Grants shall not be offered to students whose available resources, including all grant, scholarship, and work assistance awards, meet or exceed the student's financial need.

29.1(7) Award transfers and adjustments.

a. Awards may be transferred among eligible institutions.

b. Recipients are responsible for promptly notifying the appropriate institution of any change in enrollment or financial situation. The educational institution will make necessary changes and notify the commission.

29.1(8) Restriction. A student who is in default on a Stafford Loan, SLS Loan, or a Perkins/National Defense Student Loan, or who owes a repayment on any Title IV grant assistance or state award, shall be ineligible for assistance under the displaced workers financial aid program. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in appeal under the procedure set forth in 283—Chapter 3.

29.1(9) Institutional reporting. The commission will monitor the program according to this chapter and will require participating postsecondary institutions that receive funds for enrolled students to furnish any information necessary for the implementation or administration of this program.

This rule is intended to implement Iowa Code chapter 261 as amended by 1990 Iowa Acts, Senate File 2423 [ch 1272], section 46.

ARC 1303A**COLLEGE STUDENT AID
COMMISSION[283]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b".

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission proposes to adopt a new Chapter 30, "Osteopathic Forgivable Loan Program," Iowa Administrative Code.

This new chapter will establish the rules necessary for the administration of the Osteopathic Forgivable Loan Program, which was funded by the 1990 Iowa Legislature.

COLLEGE STUDENT AID COMMISSION[283] (cont'd)

Interested persons may submit comments orally or in writing to the Executive Director, College Student Aid Commission, 201 Jewett Building, Des Moines, Iowa 50309, telephone (515)281-3501, on or before November 1, 1990.

This rule is intended to implement Iowa Code chapter 261 as amended by 1990 Iowa Acts, Senate File 2423 [ch 1272], section 52.

The following new chapter is proposed:

CHAPTER 30

OSTEOPATHIC FORGIVABLE LOAN PROGRAM

283—30.1(261) Osteopathic forgivable loan program. A state-supported and administered forgivable loan program for Iowans enrolled at the University of Osteopathic Medicine and Health Sciences.

30.1(1) Definitions. As used in this chapter:

"Iowa resident student" means an individual who meets the criteria used by the state board of regents to determine residency for tuition purposes, 681 IAC 1.4(262).

"Medical practice" means working full-time as a licensed physician in the state of Iowa following completion of either a required internship or residency program as certified by the state board of medical examiners.

"Medical residency or internship program" means an advanced medical training program which graduates pursue immediately after graduating from the university.

30.1(2) Student eligibility. Individuals enrolling as first-year students on or after July 1, 1990, in the osteopathic university who meet the Iowa residency criteria as defined in 681 IAC 1.4(262) and plan to practice medicine in Iowa are eligible recipients.

30.1(3) Promissory note. The recipient of a loan under this program shall sign a promissory note agreeing to practice medicine in Iowa for one full year for each loan received or to repay the loan and accrued interest according to repayment terms specified in the note.

30.1(4) Interest rate. The rate of interest on loans under this program shall be at the rate of 10.5 percent per annum on the unpaid principal balance.

30.1(5) Disbursement of loan proceeds.

a. The full loan amount will be disbursed when the university certifies that the borrower is an Iowa resident and enrolled in good standing.

b. The loan check will be made copayable to the borrower and the University of Osteopathic Medicine and Health Sciences and will be sent to the university within ten days following the receipt of the proper certification.

c. The university will deliver the check to the student and require that the loan check be endorsed to the university to be applied directly to the borrower's tuition account.

d. If the student withdraws from attendance and is entitled to a refund of tuition and fees, the pro rata share of the refund attributable to the state loan must be refunded to the commission.

30.1(6) Loan cancellations.

a. Thirty days following the termination of enrollment in the University of Osteopathic Medicine and Health Sciences or the completion of a medical residency or internship or termination of a medical practice in the state of Iowa, the borrower shall notify the commission of the nature of the borrower's employment or educational status.

b. To certify eligibility for cancellation, the borrower must submit to the commission an affidavit from a local medical society or state licensing board verifying that the borrower practiced medicine as a licensed physician in the state of Iowa for 12 consecutive months for each annual loan to be canceled.

c. If the borrower qualifies for partial loan cancellation, the commission shall notify the borrower promptly and revise the repayment schedule accordingly.

30.1(7) Loan payments.

a. Prior to the start of the repayment period, the commission shall provide the borrower with a repayment schedule, modified to reflect any applicable cancellation benefits.

b. It shall be the borrower's responsibility to remit payments to the commission by the fifteenth day of each month.

c. In the event the borrower fails to abide by any material provision of the promissory note or fails to make any payment due under the promissory note within ten days after the date the payment is due, the commission may declare the borrower in default and declare the entire unpaid balance and accrued interest on the promissory note due.

d. The borrower is responsible for notifying the commission immediately of any change in name, place of employment, or home address.

30.1(8) Deferral of repayment.

a. Repayment of the borrower's loan obligation may be deferred under the following circumstances: active duty in the United States military service, not to exceed three years; during a period of temporary disability, not to exceed three years.

b. Repayment of the borrower's loan obligation under this loan program is not required during periods of enrollment as an osteopathic student at the University of Osteopathic Medicine or during an internship or medical residency.

30.1(9) Restriction. A student who is in default on a Stafford Loan, SLS Loan, or a Perkins/National Direct/National Defense Student Loan or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for assistance under the Iowa grant program. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in appeal under the procedure set forth in 283—Chapter 3, Iowa Administrative Code.

This rule is intended to implement Iowa Code chapter 261 as amended by 1990 Iowa Acts, Senate File 2423 [ch 1272], section 52.

ARC 1319A**EDUCATIONAL EXAMINERS
BOARD[282]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b".

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code Supplement section 260.2(12), the Board of Educational Examiners hereby gives Notice of Intended Action to adopt, renumber and amend Chapters 73 to 75 and 79 to 82 transferred from the Education Department (281), Iowa Administrative Code. [See **ARC 1315A**]

The transfer implements changes in licensing and rule-making authority relating to practitioner licensure and professional development for local school district and merged area schools mandated by Iowa Code Supplement chapter 260.

The substance of these rules was Adopted and Filed Emergency and is published herein as **ARC 1316A**.

The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Consideration will be given to all written views thereto received by the Board of Educational Examiners, Grimes State Office Building, Des Moines, Iowa 50319-0147, on or before October 25, 1990.

There will be a public hearing on October 25, 1990, at 9 a.m. in the State Board Conference Room, East 14th Street and Grand Avenue, Des Moines, Iowa. Persons may present their views at this public hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing must contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, Des Moines, Iowa 50319-0147, or at (515)281-3611 prior to the date of the public hearing in order to be scheduled for an appearance.

These rules are intended to implement Iowa Code Supplement chapter 260.

ARC 1318A**EDUCATION DEPARTMENT[281]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b".

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 256.7(5) and 281.3(1), the Department of Education hereby gives Notice of Intended Action to amend Chapter 41, "Education of Pupils Requiring Special Education," Iowa Administrative Code.

The purpose of this amendment is to resolve a federal compliance issue regarding an administrative dismissal of a continued appeal. The U.S. Department of Education has advised this Department that the current wording is a violation of due process.

Any interested person may make written or oral suggestions or comments on this proposed amendment prior to October 23, 1990. Comments should be directed to the Chief, Bureau of Special Education, Iowa Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146, telephone (515)281-3176.

Also, there will be a public hearing on October 23, 1990, at 1 p.m. in the conference room on the third floor north, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa. Persons may present their views at this public hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing should contact the Chief, Bureau of Special Education, at least one day prior to the date of the public hearing.

This rule is intended to implement Iowa Code section 281.6.

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 1317A**. The content of that submission is incorporated here by reference.

ARC 1314A**HUMAN SERVICES
DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b".

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 76, "Application and Investigation," appearing in the Iowa Administrative Code.

Recipients that utilize Medicaid services at a frequency or in an amount which is considered to be overuse of services may be restricted (locked-in) to receive services from a designated provider(s) to promote high quality health care and to prevent harmful practices such as duplication of medical services, drug abuse or overuse, and possible drug interactions. Under current policy recipients are locked-in for a minimum of six months, with longer restrictions determined on an individual basis. This amendment changed the minimum period for lock-in to 24 months.

A six-month lock-in period is too short to ensure behavior changes. A survey of other states has determined Minnesota, Michigan, Kansas, and Missouri have a 24-month lock-in period and Nebraska and Colorado have 12 months.

HUMAN SERVICES DEPARTMENT[441] (cont'd)

Consideration will be given to all written data, views, and arguments thereto received by the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before October 24, 1990.

This rule is intended to implement Iowa Code section 249A.4.

The following amendment is proposed:

Amend subrule 76.9(1) as follows:

76.9(1) A lock-in or restriction shall be imposed for a minimum of ~~six~~ 24 months with longer restrictions determined on an individual basis.

ARC 1290A

HUMAN SERVICES
DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b".

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," appearing in the Iowa Administrative Code.

These amendments will provide Medicaid coverage of the drug Clozapine for treatment of chronic schizophrenia when certain criteria are met.

Clozapine is a newly marketed antipsychotic drug found to be clinically effective in the psychiatric management of treatment-resistant schizophrenic patients who have derived little benefit from standard neuroleptic medications.

Schizophrenia is characterized by positive symptoms such as delusions, hallucinations, disturbances in thinking and communication, and by deteriorating social functioning which have historically been treated with neuroleptic medications. Many of the neuroleptic medications have unpleasant side effects including blurred vision, dry mouth, depression, restlessness, parkinsonism and, in a few cases, generally after several years of usage, irreversible abnormal movements of facial and limb muscles called tardive dyskinesia.

In addition to the positive symptoms there are negative symptoms of schizophrenia such as loss of motivation, withdrawal, emotional flatness, and lack of interest or pleasure from activities or social relations. These symptoms receive little relief from current neuroleptic medications.

Persons treated with Clozapine experience limited side effects, do not develop tardive dyskinesia, and show improvement in both positive and negative symptoms, often greater than with other medications. However, the main side effect of Clozapine is an acute disease which affects the white blood cell count in approximately 1 percent of the persons taking the medication. Therefore,

persons on Clozapine require weekly hematology tests to ensure that the white blood cell count has not been affected.

Approximately 1 percent of the population (29,080 in Iowa) suffers from schizophrenia. It is estimated that 10 to 30 percent of persons with schizophrenia (2,908 to 8,724) are considered treatment-resistant, e.g., have received various treatments with little or no benefit. It is recognized that many persons with treatment-resistant schizophrenia may be tried on Clozapine, but only one-third of the persons will benefit and be maintained on it. It is estimated that 85 to 90 percent of the persons with treatment-resistant schizophrenia are on, or eligible for Medicaid.

Upon receipt of the Federal Food and Drug Administration approval, Sandoz Pharmaceuticals established a pricing and distribution mechanism which packaged the laboratory work, medication, and monitoring service. As a result, Clozapine is costly (\$172 per week) and is currently available only on a limited, case-by-case basis in Iowa. Costs are being paid by family members in several areas of the state, by several Iowa counties who have agreed to assume responsibility for the costs in anticipation of a long-term savings, and by a private insurer in at least one known case.

Due to the costs and numbers involved and the limited experience Iowa has had with the drug, the Department of Human Services is proposing to require prior authorization for payment of Clozapine using criteria developed by the state mental health institutions. Those criteria are as follows:

1. The condition being treated must meet the Diagnostic and Statistical Manual (DSM) III-R criteria for a schizophrenic disorder.

2. The patient must have had an unsuccessful trial on at least three or more different antipsychotic medications or be unable to tolerate other neuroleptics due to tardive dyskinesia or other side effects.

3. The patient must be treatment-resistant as evidenced by a documented duration of illness longer than ten years with multiple hospitalizations, or continuous hospitalization for more than one year.

4. The patient must have a score of 61 or higher on the Brief Psychiatric Rating Scale (BPRS).

5. Payment will be approved for 12 weeks of therapy for patients meeting criteria 1 through 4 above if there are no contraindications for use of the drug and the patient has undergone a medical evaluation prior to the beginning of drug therapy.

6. After 12 weeks, patients showing improvement (a 20 percent reduction in the total BPRS score from baseline and documented progress) will continue to be covered.

7. Patients showing some documented clinical improvement after 12 weeks but not meeting continuation criteria must be reviewed for consideration of an additional 12 weeks of therapy. If an additional 12 weeks is granted, continuation criteria must be met to continue coverage after a total of 24 weeks of therapy.

8. Patients showing no improvement after 12 weeks of therapy are not eligible for continued therapy with Clozapine.

Physicians disagree over the number of persons with schizophrenia who might benefit from use of the drug. These criteria are intended to describe a conservative definition of medical necessity for treatment.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Other options would include giving more people the initial 12 weeks of payment. These options were avoided because of increased costs.

Another option would be to refuse to pay for the drug altogether. This option was rejected because it very likely violates the Medicaid statute by discriminating against persons on the basis of diagnosis.

There may be significant savings from the use of Clozapine by persons with schizophrenia in Iowa. For about 30 percent of the clients in-patient hospitalization can be avoided. Anticipated savings need to be evaluated carefully in light of potential alternative placement or living arrangements and the individual's capacity for self-sufficiency.

Consideration will be given to all written data, views, and arguments thereto received by the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before October 24, 1990.

Oral presentations may be made by appearing at the following meetings. Written comments will also be accepted at that time.

Cedar Rapids - October 25, 1990 Cedar Rapids District Office Conference Room - 6th Floor 221 4th Avenue, S.E. Cedar Rapids, Iowa 52401	10 a.m.
Council Bluffs - October 25, 1990 Council Bluffs District Office, Lower Level 417 E. Kanessville Boulevard Council Bluffs, Iowa 51501	10 a.m.
Davenport - October 24, 1990 Davenport District Office Fifth Floor Conference Room 428 Western Davenport, Iowa 52801	10 a.m.
Des Moines - October 24, 1990 Des Moines District Office City View Plaza, Conference Room 100 1200 University Des Moines, Iowa 50314	10 a.m.
Mason City - October 24, 1990 Mason City District Office Mohawk Square 22 North Georgia Avenue Mason City, Iowa 52401	10 a.m.
Ottumwa - October 24, 1990 Ottumwa District Office Fifth Floor Conference Room 226 West Main Ottumwa, Iowa 52501	10 a.m.
Sioux City - October 25, 1990 Sioux City District Office Suite 624 507 7th Street Sioux City, Iowa 51101	1 p.m.
Waterloo - October 25, 1990 Waterloo District Office Pinecrest 1407 Independence Avenue Waterloo, Iowa 50701	10 a.m.

These rules are intended to implement Iowa Code section 249A.4.

The following amendments are proposed:

ITEM 1. Amend subrule 78.1(2), paragraph "a," subparagraph (2), by adding the following paragraph to the end of the subparagraph:

Payment for clozapine will be approved when the following criteria have been met:

1. The condition being treated meets the Diagnostic and Statistical Manual (DSM) III-R criteria for a schizophrenic disorder.

2. The patient has had an unsuccessful trial on at least three or more different antipsychotic medications or is unable to tolerate other neuroleptics due to tardive dyskinesia or other side effects.

3. The patient must be treatment-resistant as evidenced by a documented duration of illness longer than ten years with multiple hospitalizations, or continuous hospitalization for more than one year.

4. The patient must have a score of 61 or higher on the Brief Psychiatric Rating Scale (BPRS).

5. Payment will be approved for 12 weeks of therapy for patients meeting criteria 1 through 4 above if there are no contraindications for use of the drug and the patient has undergone a medical evaluation prior to the beginning of drug therapy.

6. After 12 weeks, patients showing improvement (a 20 percent reduction in the total BPRS score from baseline and documented progress) will continue to be covered.

7. Patients showing some documented clinical improvement after 12 weeks but not meeting continuation criteria must be reviewed for consideration of an additional 12 weeks of therapy. If an additional 12 weeks is granted, continuation criteria must be met to continue coverage after a total of 24 weeks of therapy.

8. Patients showing no improvement after 12 weeks of therapy are not eligible for continued therapy with clozapine. (Cross-reference 78.28(1)"g")

ITEM 2. Amend subrule 78.28(1) by adding the following new paragraph:

g. Prior approval is required for clozapine. Payment will be approved when the following criteria have been met:

(1) The condition being treated meets the Diagnostic and Statistical Manual (DSM) III-R criteria for a schizophrenic disorder.

(2) The patient has had an unsuccessful trial on at least three or more different antipsychotic medications or is unable to tolerate other neuroleptics due to tardive dyskinesia or other side effects.

(3) The patient must be treatment-resistant as evidenced by a documented duration of illness longer than ten years with multiple hospitalizations, or continuous hospitalization for more than one year.

(4) The patient must have a score of 61 or higher on the Brief Psychiatric Rating Scale (BPRS).

(5) Payment will be approved for 12 weeks of therapy for patients meeting criteria 1 through 4 above if there are no contraindications for use of the drug and the patient has undergone a medical evaluation prior to the beginning of drug therapy.

(6) After 12 weeks, patients showing improvement (a 20 percent reduction in the total BPRS score from baseline and documented progress) will continue to be covered.

(7) Patients showing some documented clinical improvement after 12 weeks but not meeting continua-

HUMAN SERVICES DEPARTMENT[441] (cont'd)

tion criteria must be reviewed for consideration of an additional 12 weeks of therapy. If an additional 12 weeks is granted, continuation criteria must be met to continue coverage after a total of 24 weeks of therapy.

(8) Patients showing no improvement after 12 weeks of therapy are not eligible for continued therapy with clozapine. (Cross-reference 78.1(2)"a"(2))

ARC 1291A**NATURAL RESOURCE
COMMISSION[571]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b".

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 455A.5(6)"a," the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 61, "State Parks and Recreation Areas," Iowa Administrative Code.

These amendments allow scuba diving in state park lakes outside of the designated beach area.

Any interested person may make written suggestions or comments on the proposed amendments prior to November 20, 1990. Such written materials should be directed to the Park Management Bureau, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; FAX (515)281-8895. Persons who wish to convey their views orally should contact the Park Management Bureau at (515)281-6158 or at the Park Management Bureau offices on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on November 20, 1990, at 1 p.m. in the Fifth Floor East Conference Room of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules.

These rules are intended to implement Iowa Code section 111.35.

The following amendments are proposed:

ITEM 1. Amend rule 571—61.2(111), definition of "Scuba diving," as follows:

"Scuba diving" means swimming with the aid of self-contained underwater breathing apparatus or the use of a snorkel.

ITEM 2. Amend subrule 61.5(8) by rescinding paragraph "b" and inserting in lieu thereof the following:

b. Persons may scuba dive in areas other than the designated beach area and shall display the diver's flag as specified in rule 571—41.10(106).

These rules are intended to implement Iowa Code section 111.35.

ARC 1293A**NATURAL RESOURCE
COMMISSION[571]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b".

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 455A.5(6)"a," 109.38, 109.39, 109.67, and 109.76, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 81, "Fishing Regulations," Iowa Administrative Code.

The proposed amendments would make various modifications to Chapter 81 which establishes season dates, territories, daily catch limits, possession limits and length limits for sport fishing.

Any interested person may make written suggestions or comments on these proposed amendments prior to October 25, 1990. Such written comments should be directed to Marion Conover, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034, FAX (515) 281-8895. Persons who wish to convey their views orally should contact the Bureau of Fisheries at (515) 281-5208 or at the fisheries office on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on October 24, 1990, at 1 p.m. in the conference room on the fourth floor of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rule.

These rules are intended to implement Iowa Code sections 109.38, 109.39, 109.67 and 109.76.

ITEM 1. Amend rule 571—81.1(109) as follows:

571—81.1(109) Seasons, territories, daily catch bag limits, possession limits, and length limits.

Change the heading "Daily Catch Limit" to "Daily Bag Limit."

Under the heading "Minimum Length Limits," entry for Muskellunge or Hybrid Muskellunge, change 30" to 36".

Under the heading "Boundary Rivers," change the word "catch" to "bag" in the entries for Yellow Perch, Catfish, Black Bass, Combined Walleye, Sauger, and Saugeye and Northern Pike.

Under the heading "Boundary Rivers," entry for Catfish, add "in Mississippi River" after possession limit.

Under the heading "Boundary Rivers," entry for Combined Walleye, Sauger, and Saugeye, change 10 to 6 and 20 to 12.

ITEM 2. Amend subrule 81.2(2) as follows:

81.2(2) Black bass. A 15-inch minimum length limit shall apply on black bass in all public lakes except as otherwise posted. On federal flood control reservoirs a 15-inch minimum length limit shall apply on black bass at Coralville and Rathbun and a 12-inch minimum length limit shall apply at Saylorville and Red Rock. A 12-inch minimum length limit shall apply on black bass in all

NATURAL RESOURCE COMMISSION[571] (cont'd)

interior streams, river impoundments, border rivers, and chutes and backwaters of border rivers where intermittent or constant flow from the border river occurs, except that a 14-inch minimum length limit shall apply to ~~that portion of the Mississippi River in Iowa which borders Wisconsin~~. All black bass caught from the following stream segments must be immediately released alive:

1. Middle Raccoon River, Guthrie County, extending *downstream* from below Lennon Mills Dam at Panora as posted to the ~~bridge on county blacktop P28 dam at Redfield~~.

2. Maquoketa River, Delaware County, extending *downstream* from below Lake Delhi Dam as posted to the first county gravel road bridge.

ITEM 3. Amend subrule 81.2(3) as follows:

81.2(3) Walleye. A 14-inch minimum length limit shall apply on walleye in Lakes West Okoboji, East Okoboji, Spirit Lake, Upper Gar, Minnewashta, and Lower Gar in Dickinson County, *and Clear Lake in Cerro Gordo County. A 15-inch minimum length limit shall apply on walleye in Storm Lake, Buena Vista County.* No more than one walleye above 20 inches in length may be taken per day from the above lakes *except in Clear Lake and Storm Lake where no more than one walleye above 22 inches in length may be taken per day.* The daily ~~catch~~ bag limit for walleye in the above lakes shall be three with a possession limit of six. A 15-inch minimum length limit shall apply on walleye to ~~that portion of in the Mississippi River in Iowa which borders Wisconsin~~.

ITEM 4. Amend subrule 81.2(5) as follows:

81.2(5) Special trout regulations. A 14-inch minimum length limit shall apply on brown trout *in Spring Branch Creek, Delaware County, from the spring source to county highway D5X as posted, and in portions of Bloody Run Creek, Clayton County; Spring Branch Creek, Delaware County; and French Creek, Allamakee County, where posted.* Fishing in the posted area of Bloody Run Creek, French Creek, Swiss Valley Creek, ~~and Spring Branch Creek, and Hewett and Ensign Creeks (Ensign Hollow)~~ shall be by artificial lure only. All trout caught from the posted portion of Swiss Valley Creek, Dubuque County, *and Hewett and Ensign Creeks (Ensign Hollow), Clayton County,* must be immediately released alive.

ITEM 5. Amend subrule 81.2(6) as follows:

81.2(6) Exception border lakes. In Little Spirit Lake, Dickinson County; Iowa and Tuttle (Okamanpedan) Lakes, Emmet County; Burt (Swag) Lake, Kossuth County; and Iowa Lake, Osceola County, the following shall apply:

- a. Walleye daily ~~catch~~ bag and possession limit six;
- b. Northern pike daily ~~catch~~ bag and possession limit three;
- c. Largemouth and smallmouth bass daily ~~catch~~ bag and possession limit six;
- d. Channel catfish daily ~~catch~~ bag and possession limit eight. Open season on the above fish shall be the Saturday nearest May 1 to February 15 each year.
- e. Yellow perch, white bass, and sunfish daily ~~catch~~ bag and possession limit 30, and crappie daily ~~catch~~ bag and possession limit 15. There is a continuous open season on these species.
- f. Spears and bow and arrow may be used to take carp, buffalo, dogfish, gar, sheepshead, and carpsucker from sunrise to sunset during the period from the first Saturday in May to February 15 each year in the above lakes.

ITEM 6. Amend subrule 81.2(9) as follows:

81.2(9) Catfish. For the purpose of this rule, stream catfish ~~catch bag and possession~~ limits apply at the federal flood control impoundments of Rathbun Lake, Red Rock Lake, Saylorville Lake, and Coralville Lake.

ITEM 7. Further amend rule 81.2(109) by adding a new subrule as follows:

81.2(10) Length limits. No person shall transport or possess on any waters of the state any fish with a length limit restriction unless the length of the fish can be determined. For purposes of this subrule "on any waters of the state" includes from the bank or shore line in addition to wading and by boat.

These rules are intended to implement Iowa Code sections 109.38, 109.39, 109.67 and 109.76.

ARC 1292A

NATURAL RESOURCE
COMMISSION[571]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b".

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 455A.5(6)"a" and 109B.1, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 82, "Commercial Fishing," Iowa Administrative Code.

The proposed amendments remove channel catfish and flathead catfish from the permissive catch in the Missouri River and add black buffalo and bighead carp to the permissive catch in the Mississippi and Missouri rivers. A procedure for issuing duplicate operator's licenses is established.

The Commission has determined that these proposed amendments may have an impact on small business. The Commission has considered the factors listed in Iowa Code section 17A.31(4). The Commission will issue a regulatory flexibility analysis as provided in Iowa Code sections 17A.31 to 17A.33 if a written request is filed by delivery or by mailing postmarked no later than October 30, 1990, to the Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034. The request may be made by the Administrative Rules Review Committee, the Governor, a political subdivision, at least 25 persons who qualify as a small businesses under Iowa Code sections 17A.31 to 17A.33, or an organization of small businesses representing at least 25 persons which is registered with this Department under Iowa Code sections 17A.31 to 17A.33.

Any interested person may make written suggestions or comments on these proposed amendments prior to October 30, 1990. Such written materials should be directed to Marion Conover, Department of Natural Resources, Wallace State Office Building, Des Moines,

NATURAL RESOURCE COMMISSION[571] (cont'd)

Iowa 50319-0034, FAX (515) 281-8895. Persons who wish to convey their views orally should contact the Bureau of Fisheries at (515) 281-5208 or at the fisheries office on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on October 29, 1990, at 7 p.m. in Council Bluffs at the Community Hall, 205 South Main, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

This rule is intended to implement Iowa Code sections 109.38, 109.39 and 109B.1.

ITEM 1. Amend subrule 82.2(1) as follows:

82.2(1) Permissive catch. ~~It~~ *Except for channel catfish and flathead catfish which may not be taken from the Missouri River, it shall be lawful to take with licensed commercial fishing gear the following species: carp, smallmouth buffalo, largemouth buffalo, black buffalo, channel catfish, flathead catfish, black bullhead, yellow bullhead, brown bullhead, freshwater drum, northern redhorse, silver redhorse, spotted sucker, white sucker, river carpsucker, quillback, highfin carpsucker, white amur, bighead carp, shovelnose sturgeon, longnose gar, shortnose gar, bowfin, gizzard shad, goldeye, and mooneye.*

ITEM 2. Amend rule 571—82.2(109B) by adding the following new subrule:

82.2(7) Duplicate operator's license. An owner making a request for a duplicate operator's license will be issued one only after records show the owner has purchased a limit of five operator's licenses. The duplicate helper's license will be issued to one individual and is not transferable. The issuing fee is \$1.

ARC 1294A

NATURAL RESOURCE
COMMISSION[571]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)'b'.

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 455A.5(6)"a," the Natural Resource Commission hereby gives Notice of Intended Action to rescind Chapter 98 and to adopt in lieu thereof a new Chapter 98, "Wild Turkey Spring Hunting," Iowa Administrative Code.

These rules regulate hunting wild turkeys and include season dates, licensing procedures, and transportation tag requirements.

Any interested person may make written suggestions or comments on these proposed rules prior to October 30, 1990. Such written materials should be directed to the Wildlife Bureau, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-

0034; FAX (515) 281-8895. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515) 281-6156 or at the wildlife offices on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on October 30, 1990, at 10 a.m. in the fourth floor conference room of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record, and to confine their remarks to the subject of the rules.

These rules are intended to implement Iowa Code sections 109.38, 109.39, 109.48, and 110.1 and Iowa Code Supplement section 110.7 as amended by 1990 Iowa Acts, House File 2114 [ch1003].

Rescind 571—Chapter 98 and insert in lieu thereof the following new chapter:

CHAPTER 98
WILD TURKEY SPRING HUNTING

RESIDENT WILD TURKEY SPRING HUNTING

571—98.1(109) General. Wild turkey may be taken during the spring season subject to the following:

98.1(1) License. All hunters must have in possession a spring wild turkey license valid for the current year when hunting wild turkey. No person, while hunting turkey, shall carry or have in possession any license or transportation tag issued to another person. Two types of licenses will be issued.

a. Combination shotgun-or-archery licenses will be issued by zone and period and will be valid in the designated zone or zones and for the designated period only. No person shall apply for or obtain more than two combination spring shotgun-or-archery licenses per year.

b. Archery-only licenses will be valid statewide and shall be valid during the entire period open for spring turkey hunting. Persons purchasing one archery-only license shall be ineligible to purchase any other spring wild turkey hunting license.

98.1(2) Daily bag and possession limits. Daily bag limit, one bearded (or male) wild turkey. Possession limit and season limit, one bearded (or male) wild turkey per license.

98.1(3) Shooting hours. Shooting hours shall be from one-half hour before sunrise to sunset.

571—98.2(109) Method of take.

98.2(1) Permitted weapons. Wild turkey may be taken in accordance with the type of license issued as follows:

a. Combination shotgun-or-archery license. Wild turkey may be taken by shotgun or muzzleloading shotgun not smaller than 20-gauge and shooting shot sizes 4, 5, 6, 7 1/2, or 8 only; and by long bow, recurve or compound bow shooting broadhead or blunthead (minimum diameter 9/16 inch) arrows only. No person may have shotshells containing shot of any size other than 4, 5, 6, 7 1/2, or 8 on their person while hunting wild turkey.

b. Archery-only license. Wild turkey may be taken by long bow, recurve or compound bow shooting broadhead arrows only.

98.2(2) Prohibited devices. The use of live decoys, dogs, horses, motorized vehicles, aircraft, bait, crossbows, except as otherwise provided, and the use or aid of recorded or electronically amplified bird calls or sounds, or recorded or electronically amplified imitations of bird calls or sounds is prohibited, except that paraplegics and

NATURAL RESOURCE COMMISSION[571] (cont'd)

single or double amputees of the legs may hunt from any stationary motor-driven land conveyance. "Paraplegic" means an individual afflicted with paralysis of the lower half of the body with the involvement of both legs, usually due to disease of or injury to the spinal cord.

98.2(3) Zones. Persons with a spring turkey hunting license may take wild turkey in designated areas in accordance with the type of license issued. Persons with an archery-only license may take wild turkey statewide. Persons with a combination shotgun-or-archery license may take wild turkey in one of five zones described as follows:

a. **Zone 1.** Zone 1 is all units of Stephens State Forest west of U.S. Highway 65 in Clarke and Lucas counties only.

b. **Zone 2.** Zone 2 is Shimek State Forest in Lee and Van Buren counties only.

c. **Zone 3.** Zone 3 is Yellow River State Forest in Allamakee county only.

d. **Zone 4.** Zone 4 is all of Iowa except for those areas described by Zones 1, 2, 3, and 5.

e. **Zone 5.** Zone 5 is that part of Iowa described as follows: beginning where U.S. Highway 63 crosses the Iowa-Minnesota border; thence south on U.S. Highway 63 to U.S. Highway 20; thence west on U.S. Highway 20 to Iowa Highway 4; thence north on Iowa Highway 4 to Iowa Highway 7; thence west on Iowa Highway 7 to the Pocahontas-Buena Vista county line; thence north along the west boundaries of Pocahontas, Palo Alto and Emmet counties to the Iowa-Minnesota border.

98.2(4) Exceptions. Licenses issued for Zones 1, 2 and 3 shall also be valid in Zone 4.

98.2(5) Hunting periods. Hunting periods will be established in accordance with the type of license issued.

a. **Combination shotgun-or-archery licenses.** The hunting periods are April 15 through April 18, 1991; April 19 through April 23, 1991; April 24 through April 30, 1991; and May 1 through May 12, 1991.

b. **Archery-only licenses.** The hunting period shall be April 15 through May 12, 1991.

571—98.3(109) Application procedure. All applications for wild turkey hunting licenses for the 1991 spring wild turkey hunting season must be made on forms provided by the department of natural resources and returned to the office in Des Moines, Iowa, with a remittance of \$20 per license. Only one individual may apply on a single application form.

98.3(1) Application periods. Applications for 1991 spring wild turkey hunting licenses shall be received and accepted as follows:

a. **Combination shotgun-or-archery licenses.** Applications for combination shotgun-or-archery licenses will be received and accepted from January 7 through February 1, 1991, or if the application bears a valid and legible U.S. Postal Service postmark applied during the same period. Incomplete or improperly completed applications, applications not meeting the above conditions, or applications received prior to or after the application period shall not be considered valid. A person may submit up to two applications during the application period, provided that at least one application is for hunting period four in either Zone 4 or Zone 5, and that \$20 is submitted with each application. If applications have been received in excess of the license quota for any hunting zone or period, a drawing shall be conducted to determine which applicants shall receive licenses. If

the quota for any hunting zone or period has not been filled, licenses shall be issued in the order in which applications are received beginning February 25, 1991, and shall continue until the quota has been met or through March 8, 1991, whichever first occurs. From March 4 through March 8, 1991, persons who have already received one combination shotgun-or-archery license for hunting periods one, two or three may apply for one additional license for any of the hunting periods in which licenses are still available. Applications shall be handled in the same manner as other applications received from February 25 through March 8, 1991.

b. **Archery-only license.** Applications for archery-only licenses shall be received and accepted from January 7 through March 8, 1991.

98.3(2) License quotas. Separate quotas will be established for each license type.

a. **Combination shotgun-or-archery.** A limited number of combination shotgun-or-archery hunting licenses will be issued for each zone for the first three hunting periods. Except for Zones 1, 2 and 3, there shall be no limit on shotgun-or-archery licenses during hunting period four. The same quota shall apply to Zones 1, 2 and 3 in all four hunting periods. The maximum number of combination shotgun-or-archery licenses which will be issued in each zone for the designated hunting period(s) is as follows:

(1) Zone 1. Sixty-five.

(2) Zone 2. One hundred twenty-five.

(3) Zone 3. Eighty.

(4) Zone 4. Four thousand, plus licenses issued for Zones 1, 2 and 3 shall also be valid in this zone.

(5) Zone 5. One hundred fifty.

b. **Archery-only licenses.** The number of archery-only licenses shall not be limited.

98.3(3) Application forms. Applications for special turkey hunting licenses, as provided for in Iowa Code section 109.38, shall be on forms furnished by the department, and shall be received at the department of natural resources office no later than March 8, 1991.

98.3(4) Landowner-tenant licenses. No resident landowner or tenant may obtain both a free combination shotgun-or-archery license and a paid shotgun-or-archery license except persons obtaining a free landowner or tenant license may obtain a paid license in the same manner that a nonlandowner or tenant obtains a second paid license as provided in 98.3(1). Nonresident landowners are not eligible for a free wild turkey hunting license.

571—98.4(109) Transportation tag. A transportation tag bearing license number of licensee, year of issuance, and date of kill properly shown shall be visibly attached to the carcass of each wild turkey in such a manner that the tag cannot be removed without mutilating or destroying the tag before the carcass can be transported from the place of kill. The tag shall be proof of possession of the carcass by above-mentioned licensee.

98.5 to 98.9 Reserved.

Rules 98.1(109) to 98.4(109) are intended to implement Iowa Code sections 109.38, 109.39, and 109.48.

NONRESIDENT WILD TURKEY SPRING HUNTING

571—98.10(110) General. Wild turkey may be taken during the 1991 spring season subject to the following:

98.10(1) License. All hunters must have in possession a valid 1991 nonresident spring wild turkey hunting license and a 1991 habitat stamp when hunting wild

NATURAL RESOURCE COMMISSION[571] (cont'd)

turkey. No person, while hunting turkey, shall carry or have in possession any license or transportation tag issued to another person. Licenses will be issued by zone and period and will be valid in the designated zone and period only. No person shall obtain more than one spring wild turkey hunting license.

98.10(2) Seasons. Bearded (or male) wild turkey may be taken only by the use of shotguns, muzzleloading shotguns, and bow and arrow during one of the following seasons: April 15 through April 18, 1991; April 19 through April 23, 1991; and May 1 through May 12, 1991.

98.10(3) Daily, possession and season limits. The daily bag limit is one bearded (or male) wild turkey; the possession and season limit is one bearded (or male) wild turkey.

98.10(4) Shooting hours. Shooting hours shall be from one-half hour before sunrise to sunset each day.

571—98.11(110) Zones open to hunting. Licenses will be valid only in designated areas as follows:

1. Zone 1. Zone 1 is all units of Stephens State Forest in Clarke and Lucas counties west of U.S. Highway 65.

2. Zone 2. Zone 2 is the Shimek State Forest in Lee and Van Buren counties only.

3. Zone 3. Zone 3 is the Yellow River Forest in Allamakee county only.

4. Zone 4. Zone 4 is that portion of Iowa bounded on the north by Interstate Highway 80 and on the west by U.S. Highway 59, with the exception of the areas described as Zone 1 and Zone 2.

5. Zone 5. Zone 5 is that portion of Iowa bounded on the north by U.S. Highway 20 and on the east by U.S. Highway 59.

6. Zone 6. Zone 6 is that portion of Iowa lying east of U.S. Highway 63 and north of Interstate Highway 80, with the exception of that area described as Zone 3.

7. Zone 7. Zone 7 is that portion of Iowa bounded on the north by U.S. Highway 20, on the west by U.S. Highway 59, on the south by Interstate Highway 80, and on the east by U.S. Highway 63.

571—98.12(110) License quotas. A limited number of wild turkey hunting licenses will be issued in each zone in each season (April 15-18, April 24-30 and May 1-12, 1991) as follows:

1. Zone 1. Closed.
2. Zone 2. Closed.
3. Zone 3. Closed.
4. Zone 4. Sixty.
5. Zone 5. Fifteen.
6. Zone 6. Sixty.
7. Zone 7. Fifteen.

571—98.13(110) Means and method of take.

98.13(1) Permitted weapons. Wild turkey may be taken only with shotguns and muzzleloading shotguns not smaller than 20-gauge and shooting shot sizes 4, 5, 6, 7 1/2, and 8 only; or with recurve, compound or long bows with broadhead or blunthead (minimum diameter 9/16 inch) arrows only. No person may have shotshells containing shot of any size other than 4, 5, 6, 7 1/2, or 8 on their person while hunting wild turkey.

98.13(2) Prohibited devices. The use of live decoys, dogs, horses, motorized vehicles, aircraft, bait, cross-bows, except as otherwise provided, and the use or aid of recorded or electronically amplified bird calls or sounds, or recorded or electronically amplified imitations of bird calls or sounds is prohibited, except that

paraplegics and single or double amputees of the legs may hunt from any stationary motor-driven land conveyance. "Paraplegic" means an individual afflicted with paralysis of the lower half of the body with the involvement of both legs, usually due to disease of or injury to the spinal cord.

571—98.14(110) Application procedure. All applications for 1991 nonresident spring wild turkey hunting licenses must be made on forms provided by the department of natural resources and returned to the Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319. Only individual applications will be accepted.

Applications for any of the three 1991 spring wild turkey hunting periods shall be received and accepted from January 7 through February 1, 1991. If applications have been received in excess of the license quota for any zone or hunting period, a drawing shall be conducted to determine which applicants shall receive licenses. If the quota for any hunting zone or period has not been filled, licenses shall be issued in the order in which applications are received beginning February 25 through March 8, 1991. No person shall submit more than one application. Incomplete or improperly completed applications, applications not meeting the above conditions, or applications received prior to or after the application period shall not be considered valid applications. The nonresident license fee shall be \$50.

571—98.15(110) Transportation tag. A transportation tag bearing license number of licensee, year of issuance and date of kill properly shown shall be visibly attached to the carcass of each wild turkey in such a manner that the tag cannot be removed without mutilating or destroying the tag before carcass can be transported from the place of kill. The tag shall be proof of possession of the carcass by the licensee.

Rules 98.10(110) to 98.15(110) are intended to implement Iowa Code section 110.1 and Iowa Code Supplement section 110.7 as amended by 1990 Iowa Acts, House File 2114.

ARC 1300A

**REVENUE AND FINANCE
DEPARTMENT[701]**

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b".

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 421.14 and 422.68(1), the Iowa Department of Revenue and Finance hereby gives Notice of Intended Action to amend Chapter 42, "Adjustments to Computed Tax"; Chapter 46, "Withholding"; and Chapter 52, "Filing Returns, Payment of Tax and Penalty and Interest," Iowa Administrative Code.

REVENUE AND FINANCE DEPARTMENT[701] (cont'd)

The 1990 Iowa Acts, House File 2546 [ch 1248] and Senate File 2411 [ch 1196], made a number of changes in the individual income tax law and corporate income tax law. These rules allow taxpayers who anticipate being eligible for the child and dependent care credit on the return for the tax year to claim additional allowances for state income tax withholding purposes which will reduce the amounts to be withheld for these individuals. Although this change is applicable on July 1, 1990, the rule specifies that this revision will apply to state income tax withholding from wages paid on or after January 1, 1991. This delay is designed to give withholding agents time to comply with this change. The rules also set out the other allowances that are available for state income tax withholding purposes. These rules provide that individual taxpayers and corporate taxpayers who invest in securities of a qualified business or a qualified seed capital fund may claim a seed capital credit against their Iowa income tax liabilities. Individual taxpayers may claim the seed capital credit for qualified investments made on or after April 26, 1990, but prior to January 1, 1993. Corporate taxpayers may claim the seed capital credit for investments made on or after July 1, 1991, but prior to January 1, 1994. The implementation clauses of these rules are revised to show that the rule revisions were made to support 1990 legislative Acts.

The proposed rules will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

The Department has determined that these proposed rules may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.31(4). The Department will issue a regulatory flexibility analysis as provided in Iowa Code sections 17A.31 to 17A.33 if a written request is filed by delivery or by mailing postmarked no later than October 23, 1990, to the Policy Section, Technical Services Division, Iowa Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Governor, a political subdivision, at least 25 persons who qualify as a small business under Iowa Code sections 17A.31 to 17A.33, or an organization of small businesses representing at least 25 persons which is registered with this agency under Iowa Code sections 17A.31 to 17A.33.

Any interested person may make written suggestions or comments on these proposed amendments on or before November 2, 1990. Such written comments should be directed to the Policy Section, Technical Services Division, Iowa Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to orally convey their views should contact the Policy Section, Technical Services Division, Iowa Department of Revenue and Finance, at (515)281-4250 or at Department of Revenue and Finance offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by October 26, 1990.

These amendments are intended to implement Iowa Code sections 422.11D, 422.16 and 422.33 as amended by 1990 Iowa Acts, House File 2546 and Senate File 2411.

The following amendments are proposed.

ITEM 1. Amend 701—Chapter 42 by adding the following new rule:

701—42.10(422) Seed capital income tax credit. An individual taxpayer making an investment in an initial offer of securities by a qualified business or a qualified seed capital fund is allowed an income tax credit of 10 percent of the amount of the investment provided the investment is made on or after April 26, 1990, but prior to January 1, 1993. In instances where a partnership, subchapter S corporation, or estate or trust makes an investment that would be eligible for the seed capital credit, the investment is allocated to the individuals who are partners, shareholders, or beneficiaries of the entities on the basis of the individuals' pro rata shares of the earnings of the partnership, subchapter S corporation, or estate or trust.

42.10(1) Definitions.

a. For the purposes of this rule, the term "agricultural processing" means the processing of agricultural products. Agricultural products are things which have a situs of their production upon the farm and which are brought into condition for uses of society by labor of those engaged in agricultural pursuits as contradistinguished from manufacturing or other industrial pursuits. In re Rodgers, 134 Neb. 832, 279 N.W. 800, 803, 1988 O.A.G. 51.

b. For the purposes of this rule, the term "assembling products" means collection or gathering together parts and placing them in their proper relation to each other. *Citizen's Nat. Bank v. Buecheit* 71 So 82.

c. For the purposes of this rule, the term "fishery processing" means the processing of fish. Fish are animals which inhabit the water, breathe by means of gills, swim by the aid of fins, and are oviparous. The term includes crabs, *State v. Savage*, 96 Or. 53, 184 P. 567, 570; scallops, *State v. Dudley*, 182 N.C. 822, 109 S.E. 63, 65; and mussels and other shellfish, *Gratz v. McKee*, C.C.A. MO., 258 F. 335, 336.

d. For the purposes of this rule, the term "forest processing" means the processing of timber. Timber means trees, felled or standing, that are suitable to be used for building. *Feneley v. Kimmell*, 29, N.W.2d 289.

e. For the purposes of this rule, the term "manufacturing" is the creation of a new and different article which has a distinctive name, character, and use, but construction of a building is not considered manufacturing nor is engineering; and manufacturing is nearly always associated with the use of manual or mechanical energy and the word is not ordinarily used to describe products of labor entirely or mainly intellectual or clerical in character. *Hazen Engineering Co. v. City of Pittsburgh*, 151 A.2d 855.

f. For the purposes of this rule, the term "person" includes individual, corporation, business trust, estate, trust, partnership, association, or any other legal entity.

g. For the purposes of this rule, the term "processing" means an operation or a series of operations whereby tangible personal property is subjected to some special treatment by artificial or natural means which changes its form, context, or condition, and results in marketable tangible personal property. These operations are commonly associated with fabricating, compounding, germinating, or manufacturing. Quarrying is not processing, but crushing and screening of limestone after quarrying is processing. *Linwood Stone Products v. State Department of Revenue*, 175 N.W.2d 393 (Ia 1970).

REVENUE AND FINANCE DEPARTMENT[701] (cont'd)

"Processing" begins when the "form, context, or condition" of tangible personal property is changed with the intent of eventually transforming the property into a salable finished product. The severance of raw material from real estate is not processing, even if this severance results in a change in the form, context, or condition of the real estate. *Linwood Stone Products Co. v. State Department of Revenue*, 175 N.W.2d 393 (Iowa 1970). Furthermore, transportation of raw material after it is severed from real estate, but prior to the time the initial change in the form, context, or condition of the raw material occurs, is not processing. *Southern Sioux County Rural Water System, Inc. v. Iowa Department of Revenue*, 383 N.W.2d 585 (Iowa 1986).

"Processing" ends when the property being processed is in the form in which it is ultimately intended to be sold at retail, *Hy-Vee Food Stores v. Iowa Department of Revenue*, 379 N.W.2d 37 (Iowa 1985). The storage or transport of property after that property is transformed into a finished product is not a part of processing.

h. For the purposes of this rule, the term "research and development" means not only fundamental research but also applied research such as testing and experimental construction and production.

i. For the purposes of this rule, the term "unaffiliated and nonrelated person, partnership, or corporation" means that the taxpayer does not have one or more of the following relationships with the entity in which the investment is made:

(1) Members of a family which include only wife or husband; brother or sister (including half-brother and half-sister); father, mother, grandparent, or any other ancestor; and children, grandchildren, or any other descendants.

(2) An individual and a corporation more than 50 percent in value of the outstanding stock of which is owned, directly or indirectly, by or for the individual.

(3) Two corporations which are members of the same controlled group of corporations as defined in section 267(f) of the Internal Revenue Code.

(4) A grantor and a fiduciary of any trust.

(5) A fiduciary of a trust and the fiduciary of another trust if the same person is the grantor of both trusts.

(6) A fiduciary of a trust and a beneficiary of the trust.

(7) A fiduciary of a trust and a beneficiary of another trust if the same person is the grantor of both trusts.

(8) A fiduciary of a trust and a corporation more than 50 percent in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust.

(9) A corporation and a partnership if the same persons own more than 50 percent in value of the outstanding stock of the corporation, and more than 50 percent of the capital interest or the profits interest in the partnership.

(10) An S corporation and another S corporation if the same persons own more than 50 percent in value of the outstanding stock of each corporation.

(11) An S corporation and a C corporation if the same persons own more than 50 percent in value of the outstanding stock of each corporation.

j. For the purposes of this rule, the constructive ownership of stock will be determined as follows:

(1) Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust will be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries;

(2) An individual will be considered as owning the stock owned, directly or indirectly, by or for the individual's family;

(3) An individual owning (otherwise than by application of 2 above) any stock in a corporation will be considered as owning the stock owned, directly or indirectly, by or for the individual's partner;

(4) The family of an individual includes the individual's brothers and sisters (including half-brothers and half-sisters), spouse, ancestors, lineal descendants, and persons related to each other by blood, marriage, or adoption; and

(5) Stock constructively owned by a person by reason of the application of (1) above will, for the purpose of applying (1), (2), or (3) above be treated as actually owned by the person, but stock constructively owned by an individual by reason of the application of (2) or (3) above will not be treated as owned by the individual for the purpose of again applying either of (2) or (3) above in order to make another the constructive owner of the stock.

k. For the purposes of this rule, to determine the constructive ownership of a capital interest or profits interest of a partnership the principles of "j" above will apply, except:

(1) Subparagraph (3) of "j" above will not apply; and

(2) Interests owned (directly or indirectly) by or for a C corporation will be considered as owned by or for any shareholder only if the shareholder owns (directly or indirectly) 5 percent or more in value of the stock of the corporation.

42.10(2) Seed capital fund.

a. In order to qualify, investors in the fund for the seed capital credit must meet all of the following conditions:

(1) The investments must be in shares or other equity interests, which are purchased for money consideration and carry voting rights, and

(2) The issue of shares or other equity interests must be registered under an expedited registration by a filing system as provided in 1990 Iowa Acts, Senate File 2411, section 3.

b. Its capital base must be used to make investments exclusively in the following types of businesses:

(1) Interstate or intrastate commerce for the purpose of manufacturing, processing, or assembling products,

(2) Agricultural, fishery, or forestry processing, or

(3) Research and development of products and processes associated with any of the activities enumerated in (1) and (2).

c. Its capital base must be used to make qualified investments according to the following schedule:

(1) Invest at least 30 percent of its capital base, raised through investments for which tax credits were taken, within three years of the fiscal year in which tax credits were claimed.

(2) Invest at least 50 percent of its capital base, raised through investments for which tax credits were taken, within four years of the fiscal year in which tax credits were claimed.

(3) Invest at least 70 percent of its capital base, raised through investments for which tax credits were claimed, within five years of the fiscal year in which tax credits were claimed.

(4) More than 20 percent of the total funds raised for which tax credits were claimed must not be invested in any one qualified business.

REVENUE AND FINANCE DEPARTMENT[701] (cont'd)

42.10(3) Qualified business. In order to be a qualified business for purposes of qualifying investments in the business for the seed capital credit, all of the following conditions must be met:

a. The business must be engaged in interstate or intrastate commerce for the purpose of manufacturing, processing, or assembling products; agricultural, fishery, or forest processing; research and development of products and processes associated with the above activities;

b. The shares offered by the business for purposes of the seed capital credit must be purchased by the taxpayer investor for money consideration and the shares must carry full voting rights;

c. The shares must be offered in an offering registered under an expedited registration by filing system as provided in 1990 Iowa Acts, Senate File 2411, section 3.

42.10(4) Tax treatment for disposal of investment within two years. If during the tax year the investment or a portion of the investment in the seed capital fund or the qualified business is disposed of prior to having been owned by the taxpayer for two years, the tax is increased by the amount of the credit taken on the investment or portion of the investment. For example, an individual made a \$10,000 investment for 100 shares in a qualified seed capital fund in December 1991 and claimed a \$1,000 seed capital income tax credit on the 1991 return of the taxpayer. In August 1992, the taxpayer sold 50 of the shares for \$4,000. On the taxpayer's 1992 return, the taxpayer must increase the tax liability by \$500 to account for the credit that is recaptured because of the taxpayer's failure to hold the seed capital shares for the two-year holding period.

If a taxpayer makes an investment in a seed capital fund or a qualified business in a tax year and disposes of the investment during the tax year, no tax credit will be allowed and recapture of the credit will not be necessary.

42.10(5) Carryover of the seed capital credit. If the seed capital credit for which the taxpayer qualifies is greater than the state income tax liability of the taxpayer for the tax year in which the investment was made, the portion of the credit which exceeds the liability may be carried over to the subsequent tax year. If the remaining seed capital is not used in the subsequent tax year, the credit may be carried over to the income tax returns for the following four tax years or until the credit is exhausted. In a situation where a taxpayer's seed capital credit is greater than the taxpayer's liability for the year the credit arises and the next five years, the unused portion of the credit expires.

42.10(6) Investments eligible for the seed capital credit. If a taxpayer makes an investment in securities offered by a seed capital fund or a qualified business, the taxpayer will be eligible for the seed capital income tax credit only if the investment is in an unaffiliated and unrelated person, partnership, or corporation.

42.10(7) Statement of qualified investment to be included in income tax return. A taxpayer who wants to claim a seed capital income tax credit for an investment in a qualified seed capital fund or qualified business must include a copy of a signed statement from a corporate officer or designated agent of the seed capital fund or qualified business with the individual income tax return to attest to the investment in the fund or qualified business. The signed statement must provide

a statement to the effect that the signer of the statement is subject to the penalty of perjury if the statement on the form is not accurate.

42.10(8) Seed capital or qualified businesses may be subject to audit. Seed capital funds or qualified businesses which qualify investors for the seed capital income tax credit will be subject to audit by department of revenue and finance employees to ascertain if all qualifications and conditions for the credit have been met.

42.10(9) Filing annual reports with the department. The issuer of shares qualifying for the seed capital fund income tax credit must file a copy of its annual report with the department for the first year in which the shares are offered as well as annual reports for the following two years. These reports are to be sent to the address shown below:

Iowa Department of Revenue and Finance
Audit and Compliance Division
Hoover State Office Building
P.O. Box 10456
Des Moines, Iowa 50306

This rule is intended to implement 1990 Iowa Acts, Senate File 2411, section 1.

ITEM 2. Amend subrule 46.3(2), paragraph "a," to read as follows:

a. General rules. On or before the date on which an individual commences employment with an employer, the individual shall furnish the employer with a signed Iowa employee's withholding allowance certificate (*IA W-4*) indicating the number of withholding allowances which the individual claims, which in no event shall exceed the number to which the individual is entitled. The employer is required to request a withholding allowance certificate from each employee. If the employee fails to furnish such a certificate, such the employee shall be considered as claiming no withholding allowances.

The employer must submit to the department of revenue and finance a copy of a withholding allowance certificate received from an employee if:

(1) *The employee claimed more than a total of 14 withholding allowances, or

(2) The employee is claiming an exemption from withholding and it is expected that the employee's wages from that employer will normally exceed \$200 per week.

**On or after January 1, 1991, the employer is to submit the employee's allowance certificate to the department of revenue and finance if the employee claimed more than 22 allowances.*

Employers are required to submit such withholding certificates on at least a calendar quarter basis: to the following address:

Iowa Department of Revenue and Finance
Audit and Compliance Division
Hoover State Office Building
P.O. Box 10456
Des Moines, Iowa 50306

The department will notify the employer whether to honor the withholding certificate or to withhold as though the employee is claiming no withholding exemptions allowances.

ITEM 3. Rescind paragraph "b" of subrule 46.3(2) and replace that paragraph with the following:

REVENUE AND FINANCE DEPARTMENT[701] (cont'd)

b. Form and content. The "Iowa Employee's Withholding Allowance Certificate" (IA W-4) must be used to determine the number of allowances that may be claimed by an employee for Iowa income tax withholding purposes. Generally, the greater number of allowances an employee is entitled to claim, the lower the amount of Iowa income tax to be withheld for the employee. The following withholding allowances may be claimed on the IA W-4 form:

(1) Personal allowances. An employee can claim one personal allowance or two if the individual is eligible to claim head of household status. The employee can claim an additional allowance if the employee is 65 years of age or older and another additional allowance if the employee is blind.

If the employee is married and the spouse either does not work or is not claiming an allowance on a separate W-4 form, the employee can claim an allowance for the spouse. The employee may also claim an additional allowance if the spouse is 65 years of age or older and still another allowance if the spouse is blind.

(2) Dependent allowances. The employee can claim an allowance for each dependent that the employee will be able to claim on the employee's Iowa return.

(3) Allowances for itemized deductions. The employee can claim allowances for itemized deductions to the extent the total amount of estimated itemized deductions for the tax year for the employee exceeds the applicable standard deduction amount by \$200. In instances where an employee is married and the employee's spouse is a wage-earner, the total allowances for itemized deductions for the employee and spouse should not exceed the aggregate amount itemized deduction allowances to which both taxpayers are entitled.

(4) Allowances for the child/dependent care credit. Effective for Iowa income taxes withheld on or after January 1, 1991, employees who expect to be eligible for the child/dependent care credit for the tax year can claim withholding allowances for the credit. The allowances are determined from a chart included on the IA W-4 form on the basis of adjusted gross income shown on the federal return for the employee. If the employee is married and has filed a joint federal return with a spouse who earns Iowa wages subject to withholding, the withholding allowances claimed by both spouses for the child/dependent care credit should not exceed the aggregate number of allowances to which both taxpayers are entitled.

ITEM 4. Amend the implementation clause for rule 701-46.3(422) to read as follows:

This rule is intended to implement Iowa Code sections 421.14 and 422.16- as amended by 1990 Iowa Acts, House File 2546.

ITEM 5. Move existing subrules 52.4(3), 52.4(5) and 52.4(6) to create new rules 701-52.6(422), 701-52.7(422) and 701-52.8(422) and renumber existing rule 701-52.6(422) as rule 701-52.10(422).

ITEM 6. Renumber existing subrules 52.4(7), 52.4(8) and 52.4(9) as new subrules 52.4(3), 52.4(4) and 52.4(5).

ITEM 7. Amend the implementation clause after rule 701-52.4(422) to read as follows:

This rule is intended to implement Iowa Code sections 422.21, 422.24, 422.25 422.33 as amended by 1987 Iowa Acts, Senate File 523, and 422.86; and 422.110.

ITEM 8. Add the following implementation clause after new rule 701-52.6(422):

This rule is intended to implement Iowa Code Supplement section 422.33.

ITEM 9. Add the following implementation clause after new rule 701-52.7(422):

This rule is intended to implement Iowa Code Supplement section 422.33.

ITEM 10. Add the following implementation clause after new rule 701-52.8(422):

This rule is intended to implement Iowa Code Supplement section 422.33.

ITEM 11. Amend 701-Chapter 52 by adding the following new rule 701-52.9(422):

701-52.9(422) Seed capital income tax credit. A corporate taxpayer making an investment in an initial offer of securities by a qualified business or a qualified seed capital fund is allowed an income tax credit equal to 10 percent of the amount of the investment. In order to qualify for the credit, investment must be made on or after July 1, 1991, but prior to January 1, 1994.

52.9(1) Definitions.

a. For the purposes of this rule, the term "agricultural processing" means the processing of agricultural products. Agricultural products are things which have a situs of their production upon the farm and which are brought into condition for uses of society by labor of those engaged in agricultural pursuits as contradistinguished from manufacturing or other industrial pursuits. In re Rodgers, 134 Neb. 832, 279 N.W. 800, 803, 1988 O.A.G. 51.

b. For the purposes of this rule, the term "assembling products" means collection or gathering together parts and placing them in their proper relation to each other. Citizen's Nat. Bank v. Bueheit 71 So 82.

c. For the purposes of this rule, the term "fishery processing" means the processing of fish. Fish are animals which inhabit the water, breathe by means of gills, swim by the aid of fins, and are oviparous. The term includes crabs, State v. Savage, 96 Or. 53, 184 P. 567, 570; scallops, State v. Dudley, 182 N.C. 822, 109 S.E. 63, 65; and mussels and other shellfish, Gratz v. McKee, C.C.A. MO., 258 F. 335, 336.

d. For the purposes of this rule, the term "forest processing" means the processing of timber. Timber means trees, felled or standing, that are suitable to be used for building. Feneley v. Kimmell, 29, N.W.2d 289.

e. For the purposes of this rule, the term "manufacturing" is the creation of a new and different article which has a distinctive name, character, and use, but construction of a building is not considered manufacturing nor is engineering; and manufacturing is nearly always associated with the use of manual or mechanical energy and the word is not ordinarily used to describe products of labor entirely or mainly intellectual or clerical in character. Hazen Engineering Co. v. City of Pittsburgh, 151 A.2d 855.

f. For the purposes of this rule, the term "person" includes individual, corporation, business trust, estate, trust, partnership, association, or any other legal entity.

g. For the purposes of this rule, the term "processing" means an operation or a series of operations whereby tangible personal property is subjected to some special treatment by artificial or natural means which changes

REVENUE AND FINANCE DEPARTMENT[701] (cont'd)

its form, context, or condition, and results in marketable tangible personal property. These operations are commonly associated with fabricating, compounding, germinating, or manufacturing. Quarrying is not processing, but crushing and screening of limestone after quarrying is processing. *Linwood Stone Products Co. v. State Department of Revenue*, 175 N.W.2d 393 (Ia 1970).

"Processing" begins when the "form, context, or condition" of tangible personal property is changed with the intent of eventually transforming the property into a salable finished product. The severance of raw material from real estate is not processing, even if this severance results in a change in the form, context, or condition of the real estate. *Linwood Stone Products Co. v. State Department of Revenue*, 175 N.W.2d 393 (Iowa 1970). Furthermore, transportation of raw material after it is severed from real estate, but prior to the time the initial change in the form, context, or condition of the raw material occurs, is not processing. *Southern Sioux County Rural Water System, Inc. v. Iowa Department of Revenue*, 383 N.W.2d 585 (Iowa 1986).

"Processing" ends when the property being processed is in the form in which it is ultimately intended to be sold at retail, *Hy-Vee Food Stores v. Iowa Department of Revenue*, 379 N.W.2d 37 (Iowa 1985). The storage or transport of property after that property is transformed into a finished product is not a part of processing.

h. For the purposes of this rule, the term "research and development" means not only fundamental research but also applied research such as testing and experimental construction and production.

i. For the purposes of this rule, the term "unaffiliated and nonrelated person, partnership, or corporation" means that the taxpayer does not have one or more of the following relationships with the entity in which the investment is made:

(1) Members of a family which include only wife or husband; brother or sister (including half-brother and half-sister); father, mother, grandparent, or any other ancestor; and children, grandchildren, or any other descendants.

(2) An individual and a corporation more than 50 percent in value of the outstanding stock of which is owned, directly or indirectly, by or for the individual.

(3) Two corporations which are members of the same controlled group of corporations as defined in section 267(f) of the Internal Revenue Code.

(4) A grantor and a fiduciary of any trust.

(5) A fiduciary of a trust and the fiduciary of another trust if the same person is the grantor of both trusts.

(6) A fiduciary of a trust and a beneficiary of the trust.

(7) A fiduciary of a trust and a beneficiary of another trust if the same person is the grantor of both trusts.

(8) A fiduciary of a trust and a corporation more than 50 percent in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust.

(9) A corporation and a partnership if the same persons own more than 50 percent in value of the outstanding stock of the corporation and more than 50 percent of the capital interest or the profits interest in the partnership.

(10) An S corporation and another S corporation if the same persons own more than 50 percent in value of the outstanding stock of each corporation.

(11) An S corporation and a C corporation if the same persons own more than 50 percent in value of the outstanding stock of each corporation.

j. For the purposes of this rule, the constructive ownership of stock will be determined as follows:

(1) Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust will be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries;

(2) An individual will be considered as owning the stock owned, directly or indirectly, by or for the individual's family;

(3) An individual owning, otherwise than by application of (2) above, any stock in a corporation will be considered as owning the stock owned, directly or indirectly, by or for the individual's partner;

(4) The family of an individual includes the individual's brothers and sisters (including half-brothers and half-sisters), spouse, ancestors, lineal descendants, and persons related to each other by blood, marriage or adoption; and

(5) Stock constructively owned by a person by reason of the application of (1) above will, for the purpose of applying (1), (2), or (3) above be treated as actually owned by the person, but stock constructively owned by an individual by reason of the application of (2) or (3) above will not be treated as owned by the individual for the purpose of again applying either of (2) or (3) above in order to make another the constructive owner of the stock.

k. For the purposes of this rule, to determine the constructive ownership of a capital interest or profits interest of a partnership the principles of "j" above will apply, except:

(1) Subparagraph (3) of "j" above will not apply; and

(2) Interests owned (directly or indirectly) by or for a C corporation will be considered as owned by or for any shareholder only if the shareholder owns (directly or indirectly) 5 percent or more in value of the stock of the corporation.

52.9(2) Seed capital fund.

a. In order to qualify, investors in the fund for the seed capital credit must meet all of the following conditions:

(1) The investments must be in shares or other equity interests, which are purchased for money consideration and carry voting rights, and

(2) The issue of shares or other equity interests must be registered under an expedited registration by a filing system as provided in 1990 Iowa Acts, Senate File 2411, section 3.

b. Its capital base must be used to make investments exclusively in the following types of businesses:

(1) Interstate or intrastate commerce for the purpose of manufacturing, processing, or assembling products,

(2) Agricultural, fishery, or forestry processing, or

(3) Research and development of products and processes associated with any of the activities enumerated in (1) and (2).

c. Its capital base must be used to make qualified investments according to the following schedule:

(1) Invest at least 30 percent of its capital base, raised through investments for which tax credits were taken, within three years of the fiscal year in which tax credits were claimed.

(2) Invest at least 50 percent of its capital base, raised through investments for which tax credits were taken, within four years of the fiscal year in which the tax credits were claimed.

(3) Invest at least 70 percent of its capital base, raised through investments for which tax credits were claimed,

REVENUE AND FINANCE DEPARTMENT[701] (cont'd)

within five years of the fiscal year in which tax credits were claimed.

(4) More than 20 percent of the total funds raised for which tax credits were claimed must not be invested in any one qualified business.

52.9(3) Qualified business. In order to be a qualified business for purposes of qualifying investments in the business for the seed capital credit, all of the following conditions must be met:

a. The business must be engaged in interstate or intrastate commerce for the purpose of manufacturing, processing, or assembling products; agricultural, fishery, or forest processing; research and development of products and processes associated with the above activities;

b. The shares offered by the business for purposes of the seed capital credit must be purchased by the taxpayer investor for money consideration and the shares must carry full voting rights;

c. The shares must be offered in an offering registered under an expedited registration by filing system as provided in 1990 Iowa Acts, Senate File 2411, section 3.

52.9(4) Tax treatment of disposal of investment within two years. If during the tax year the investment or a portion of the investment in the seed capital fund or the qualified business is disposed of prior to having been owned by the taxpayer for two years, the tax is increased by the amount of the credit taken on the investment or portion of the investment. For example, a corporation made a \$10,000 investment for 100 shares in a qualified seed capital fund in December 1991 and claimed a \$1,000 seed capital income tax credit on the 1991 return of the corporation. In August 1992, the taxpayer sold 50 of the shares for \$4,000. On the taxpayer's 1992 return, the taxpayer must increase the tax liability by \$500 to account for the credit that is recaptured because of the taxpayer's failure to hold the seed capital shares for the two-year holding period.

If a taxpayer makes an investment in a seed capital fund or a qualified business in a tax year and disposes of the investment during the tax year, no tax credit will be allowed and recapture of the credit will not be necessary.

52.9(5) Carryover of the seed capital credit. If the seed capital credit for which the taxpayer qualifies is greater than the state income tax liability of the taxpayer for the tax year in which the investment was made, the portion of this credit which exceeds the liability may be carried over to the subsequent tax year. If the remaining seed capital is not used in the subsequent tax year, the credit may be carried over to the income tax returns for the following four tax years or until the credit is exhausted. In a situation where a taxpayer's seed capital credit is greater than the taxpayer's liability for the year the credit arises and the next five years, the unused portion of the credit expires.

52.9(6) Investments eligible for the seed capital credit. If a taxpayer makes an investment in securities offered by a seed capital fund or a qualified business, the taxpayer will be eligible for the seed capital income tax credit only if the investment is in an unaffiliated and unrelated person, partnership, or corporation.

52.9(7) Statement of qualified investment to be included in the income tax return. A taxpayer who wants to claim a seed capital income tax credit for an investment in a qualified seed capital fund or qualified

business must include a copy of a signed statement from a corporate officer or designated agent of the seed capital fund or qualified business with the corporation income tax return to attest to the corporate investment in the fund or qualified business. The signed statement must provide a statement to the effect that the person who signed the statement is subject to the penalty of perjury if the statement on the form is not accurate.

52.9(8) Seed capital funds or qualified businesses may be subject to audit. Seed capital funds or qualified businesses which qualify investors for the seed capital income tax credit will be subject to audit by the department of revenue and finance to ascertain if all qualifications and conditions for the credit have been met.

52.9(9) Filing annual reports with the department. The issuer of shares qualifying for the seed capital fund income tax credit must file a copy of its annual report with the department for the first year in which the shares are offered as well as annual reports for the following two years. These reports are to be sent to the address shown below:

Iowa Department of Revenue and Finance
Audit and Compliance Division
Hoover State Office Building
P.O. Box 10456
Des Moines, Iowa 50306

This rule is intended to implement Iowa Code Supplement section 422.33 as amended by 1990 Iowa Acts, Senate File 2411.

ARC 1287A

**TRANSPORTATION
DEPARTMENT[761]**

Notice of Intended Action

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 307.12 and 307A.2, the Department of Transportation hereby gives Notice of Intended Action to amend 761—Chapter 720, "Iowa Airport Registration," Iowa Administrative Code.

These amendments update the minimum safety standards for public airports owned or leased by governmental subdivisions of the state of Iowa. Specifically, references to FAA Advisory Circulars for runway and taxiway markings and runway thresholds are being updated to reflect the most current editions.

FAA Advisory Circular 150/5340-1F, "Marking of Paved Areas on Airports," dated October 22, 1987, contains minor editorial changes. Also, the locations of holding position markings have been revised.

FAA Advisory Circular 150/5300-13, "Airport Design," dated September 29, 1989, combines several advisory circulars to consolidate similar information into one advisory circular. Appendix 2 of this circular contains the standards for locating thresholds. Appendix 2 is entitled "Threshold Siting Requirements."

TRANSPORTATION DEPARTMENT[761] (cont'd)

Copies of FAA Advisory Circular 150/5340-1F and Appendix 2 of FAA Advisory Circular 150/5300-13 appear at the end of this Notice and are a part of this Notice.*

These amendments are intended to implement Iowa Code chapter 328.

On December 4, 1990, at their regular meeting at the Department of Transportation Complex, 800 Lincoln Way, Ames, Iowa, the Transportation Commission shall consider these proposed administrative rules.

Any person or agency may submit written comments concerning these proposed rules or may submit a written request to make an oral presentation at the Commission meeting. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.

2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.

3. Indicate the general content of a requested oral presentation.

4. Be addressed to the Department of Transportation, Office of Financial/Operational Analysis, 800 Lincoln Way, Ames, Iowa 50010.

5. Be delivered to this office or postmarked no later than November 16, 1990.

The Department shall notify a person or agency properly requesting an oral presentation of the time of day scheduled for the presentation.

Proposed rule-making actions:

ITEM 1. Amend paragraph 720.10(2)"b" as follows:

b. Marking. A hard-surfaced runway or taxiway shall be marked according to FAA Advisory Circular ~~150/5340-1E~~ 150/5340-1F, as amended through ~~November 4, 1980~~ October 22, 1987. A turf landing strip or area shall have markers at all corners of the runway to delineate the runway limits. All markers shall be readily discernible from both the air and the ground.

ITEM 2. Amend paragraph 720.10(3)"a" as follows:

a. Approaches shall be clear of obstructions above a glide path of 20:1 from the ends of each usable runway. If an obstruction exists in an approach zone, the runway threshold on a paved runway shall be displaced in accordance with FAA Advisory Circular ~~150/5300-4B~~ 150/5300-13, Appendix 2, as amended through ~~July 3, 1985~~ September 29, 1989, and marked in accordance with FAA Advisory Circular ~~150/5340-1E~~ 150/5340-1F, as amended through ~~November 4, 1980~~ October 22, 1987. On a turf runway, the runway end markers shall be relocated to provide the prescribed obstruction clearance. The runway length remaining between the displaced threshold and the departure end of the runway is the landing distance available.

ARC 1312A

UTILITIES DIVISION[199]

Amended Notice of Intended Action
and

Notice of Termination

Pursuant to Iowa Code section 476.2, the Utilities Board (Board) gives notice that on September 7, 1990, the Board issued an order in Docket No. RMU-89-24, In Re: Complaint Procedures, "Order Renouncing Rules and Terminating Notice," to consider the adoption of amendments to 199 IAC 19.4(1)"i," 20.4(2), 21.4(1)"f," and 22.4(1)"b" after receiving comment on the Noticed rules published in the Iowa Administrative Bulletin on November 29, 1989, as ARC 460A.

A portion of the Notice which provides that the complainant or the public utility may also petition the Board to initiate formal complaint procedures and clarifies customer information and customer contact employee qualifications is adopted herein in ARC 1311A, effective November 7, 1990.

The Board is terminating portions of ARC 460A as follows: 199 IAC 19.4(1)"i," first and second unnumbered paragraphs; 199 IAC 20.4(2), first and second unnumbered paragraphs; 199 IAC 21.4(1)"f," first and second unnumbered paragraphs; and 199 IAC 22.4(1)"b," first and second unnumbered paragraphs.

The written comments filed in this docket suggested that a substantial number of utilities found the proposed rules regarding the inclusion of a bill insert or notice on the bill unworkable. In the oral presentation, several utilities recommended the inclusion of alternative language in the notice for those utilities with specific areas regulated by the Board. The Board has made a number of changes to the proposed rules regarding the requirement that a utility notify customers of the complaint resolution process by periodic bill inserts and will renounce the rules for additional comment.

The proposed rules require the utility to provide no less than annually a bill insert or notice notifying its customers of the address and telephone number where a utility representative qualified to assist in resolving the complaint can be reached. The proposed rules also set forth alternative language for notices or bill inserts for utilities with specific areas regulated by the Board.

Pursuant to the authority of Iowa Code sections 17A.4(1) "a" and "b," any interested person may file a written statement of position pertaining to these proposed amendments. The statement must be filed on or before October 23, 1990, by filing an original and ten copies in a form substantially complying with subrule 2.2(2). All communications shall clearly indicate the author's name and the docket in which the comment is submitted. All communications shall be directed to the Executive Secretary, Iowa State Utilities Board, Lucas State Office Building, Des Moines, Iowa 50319.

An oral presentation is scheduled in this docket for 10 a.m. on November 19, 1990, in the Utilities Board's First Floor Hearing Room, Lucas State Office Building, Des Moines, Iowa. Pursuant to 199 IAC 3.7, all interested persons may participate in this oral presentation.

The following amendments are proposed:

ITEM 1. Amend subrule 19.4(1), paragraph "i," by adding the following new paragraphs at the end thereof:

Each utility shall notify its customers, by bill insert or notice on the bill form, of the address and telephone

*Omitted from this publication pursuant to Iowa Code section 17A.6(3). The circular may be obtained from the Department.

UTILITIES DIVISION[199] (cont'd)

number where a utility representative qualified to assist in resolving the complaint can be reached. The bill insert or notice shall also include the following statement: "If (utility name) does not resolve your complaint, you may request assistance from the Utilities Division, Department of Commerce, Lucas State Office Building, Des Moines, Iowa 50319, (515) 281-5979."

The bill insert or notice for municipal utilities shall include the following statement: "If your complaint is related to service disconnection, safety, or renewable energy, and (utility name) does not resolve your complaint, you may request assistance from the Utilities Division, Department of Commerce, Lucas State Office Building, Des Moines, Iowa 50319, (515)281-5979."

The bill insert or notice on the bill shall be provided no less than annually. The utility shall include the form of the bill insert or notice in its tariff. A utility which bills by postcard may place an advertisement in a local newspaper of general circulation or a customer newsletter instead of a mailing. The advertisement must be of a type size that is easily legible and conspicuous and must contain the information set forth above.

ITEM 2. Amend subrule 20.4(2) by adding the following new paragraphs at the end thereof:

Each utility shall notify its customers, by bill insert or notice on the bill form, of the address and telephone number where a utility representative qualified to assist in resolving the complaint can be reached. The bill insert or notice shall also include the following statement: "If (utility name) does not resolve your complaint, you may request assistance from the Utilities Division, Department of Commerce, Lucas State Office Building, Des Moines, Iowa 50319, (515)281-5979."

The bill insert or notice for municipal utilities shall include the following statement: "If your complaint is related to service disconnection, safety, or renewable energy, and (utility name) does not resolve your complaint, you may request assistance from the Utilities Division, Department of Commerce, Lucas State Office Building, Des Moines, Iowa 50319, (515)281-5979."

The bill insert or notice for nonrate regulated rural electric cooperatives shall include the following statement: "If your complaint is related to the (utility name) service, rather than its rates, and (utility name) does not resolve your complaint, you may request assistance from the Utilities Division, Department of Commerce, Lucas State Office Building, Des Moines, Iowa 50319, (515)281-5979."

The bill insert or notice on the bill shall be provided no less than annually. The utility shall include the form of the bill insert or notice in its tariff. A utility which bills by postcard may place an advertisement in a local newspaper of general circulation or a customer newsletter instead of a mailing. The advertisement must be of a type size that is easily legible and conspicuous and must contain the information set forth above.

ITEM 3. Amend subrule 21.4(1), paragraph "f," by adding the following new paragraphs at the end thereof:

Each utility shall notify its customers, by bill insert or notice on the bill form, of the address and telephone number where a utility representative qualified to assist in resolving the complaint can be reached. The bill insert or notice shall also include the following statement: "If (utility name) does not resolve your complaint, you may request assistance from the Utilities Division, Department of Commerce, Lucas State Office Building, Des Moines, Iowa 50319, (515)281-5979."

ment of Commerce, Lucas State Office Building, Des Moines, Iowa 50319, (515)281-5979."

The bill insert or notice on the bill shall be provided no less than annually. The utility shall include the form of the bill insert or notice in its tariff. A utility which bills by postcard may place an advertisement in a local newspaper of general circulation or a customer newsletter instead of a mailing. The advertisement must be of a type size that is easily legible and conspicuous and must contain the information set forth above.

ITEM 4. Amend subrule 22.4(1), paragraph "b," by adding the following new paragraphs at the end thereof:

Each telephone utility shall notify its customers, by bill insert or notice on the bill form, of the address and telephone number where a utility representative qualified to assist in resolving the complaint can be reached. The bill insert or notice shall also include the following statement: "If (utility name) does not resolve your complaint, the service or rates may be subject to state regulation. You may contact the Utilities Division, Department of Commerce, Lucas State Office Building, Des Moines, Iowa 50319, (515)281-5979 for assistance."

The bill insert or notice on the bill shall be provided no less than annually. The telephone utility shall include the form of the bill insert or notice in its tariff. A telephone utility which provides local exchange service and issues an annual directory shall publish the information set forth above in its directory in addition to a mailing.

ARC 1308A

UTILITIES DIVISION[199]

Amended Notice of Intended Action

Pursuant to Iowa Code sections 17A.4 and 476.2, the Iowa Utilities Board (Board) issued an order on July 11, 1990, in Docket No. RMU-90-24, Nonutility Service, "Order Commencing Rule Making," to consider the adoption of 199 IAC 34. Notice of Intended Action was published in the Iowa Administrative Bulletin on August 8, 1990, as ARC 1153A.

The previously published Notice of Intended Action scheduled an oral presentation for September 25, 1990, at 10 a.m. in the First Floor Hearing Room, Lucas State Office Building, Des Moines, Iowa, for the purpose of receiving oral comments. Due to an unavoidable conflict in the Board's schedule, this oral presentation has been rescheduled. The oral presentation in Docket No. RMU-90-24, Nonutility Service, will be held on October 25, 1990, at 10 a.m. in the First Floor Hearing Room, Lucas State Office Building, Des Moines, Iowa, for the purpose of receiving oral comments. All persons who have filed written comments in this rule making will be notified of the new hearing date.

NOTICE — USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph "a," the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

March 1, 1988 — March 31, 1988	10.75%
April 1, 1988 — April 30, 1988	10.25%
May 1, 1988 — May 31, 1988	10.25%
June 1, 1988 — June 30, 1988	10.75%
July 1, 1988 — July 31, 1988	11.00%
August 1, 1988 — August 31, 1988	11.00%
September 1, 1988 — September 30, 1988	11.00%
October 1, 1988 — October 31, 1988	11.25%
November 1, 1988 — November 30, 1988	11.00%
December 1, 1988 — December 31, 1988	10.75%
January 1, 1989 — January 31, 1989	11.00%
February 1, 1989 — February 28, 1989	10.75%
March 1, 1989 — March 31, 1989	11.00%
April 1, 1989 — April 30, 1989	11.25%
May 1, 1989 — May 31, 1989	11.25%
June 1, 1989 — June 30, 1989	11.25%
July 1, 1989 — July 31, 1989	10.75%
August 1, 1989 — August 31, 1989	10.25%
September 1, 1989 — September 30, 1989	10.00%
October 1, 1989 — October 31, 1989	10.00%
November 1, 1989 — November 30, 1989	10.25%
December 1, 1989 — December 31, 1989	10.00%
January 1, 1990 — January 31, 1990	9.75%
February 1, 1990 — February 28, 1990	9.75%
March 1, 1990 — March 31, 1990	10.25%
April 1, 1990 — April 30, 1990	10.50%
May 1, 1990 — May 31, 1990	10.50%
June 1, 1990 — June 30, 1990	10.75%
July 1, 1990 — July 31, 1990	10.75%
August 1, 1990 — August 31, 1990	10.50%
September 1, 1990 — September 30, 1990	10.50%
October 1, 1990 — October 31, 1990	10.75%

ARC 1288A
COMMUNITY ACTION AGENCIES
DIVISION[427]

Adopted and Filed Emergency

Pursuant to the authority of 1988 Iowa Acts, chapter 1175, section 7(4), the Division of Community Action Agencies of the Department of Human Rights hereby emergency rescinds Chapter 11, "Affordable Heating Payment Program Pilot Project," Iowa Administrative Code.

The General Assembly, in 1988 Iowa Acts, chapter 1175, section 7, mandated the establishment of a two-year pilot project affordable heating payment program to be conducted by the Division of Community Action Agencies of the Department of Human Rights in cooperation with the Department of Natural Resources and the Utilities Board. An advisory board was also established to provide guidance in the development of the pilot programs and their administration.

By statute the pilot program ended September 30, 1990, and this chapter is rescinded effective October 1, 1990.

The Division finds that pursuant to Iowa Code section 17A.4(2), notice and public participation are impracticable because termination of the pilot program was provided for by 1988 Iowa Acts, chapter 1175, section 7.

The Division finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the rescission shall be effective October 1, 1990.

This rescission is intended to implement 1988 Iowa Acts, chapter 1175, section 7.

This rescission became effective October 1, 1990.

The following amendment is adopted:

Rescind **427—Chapter 11**, "Affordable Heating Payment Program Pilot Project."

[Filed emergency 9/7/90, effective 10/1/90]
 [Published 10/3/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/3/90.

ARC 1313A
CORRECTIONS DEPARTMENT[291]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 246.105, the Department of Corrections hereby adopts an emergency amendment to rule 291—20.2(246), Iowa Administrative Code.

This rule provides a standard to establish which persons are considered to be "immediate family" members in relationship to inmates incarcerated within the Department of Corrections.

This amendment is being Adopted and Filed Emergency by recommendation of the Administrative Rules Review Committee as a result of the Committee's opposition to the previously Adopted and Filed rule published in the August 22, 1990, Iowa Administrative Bulletin as **ARC 1193A**.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are contrary to the public interest in that this amendment includes nonnatural family members as immediate family for the purpose of visitation. The amendment also authorizes a criminal background check to be conducted on all immediate family members requesting to visit an inmate.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date, 35 days after publication, should be waived and the amendment should become effective on September 26, 1990. This is the same date that the Adopted and Filed rule, published as **ARC 1193A**, would have been effective.

This rule is intended to implement Iowa Code section 246.108(1)"k."

The following amendment is adopted:

Amend **291—20.2(246)** by rescinding the definition of "immediate family" and inserting the following in lieu thereof:

"Immediate family" means mother, father, sister, brother, spouse, son, daughter, natural grandparents, and natural grandchildren. Legal guardian, foster parents, stepparents, stepchildren, stepsister, and stepbrother will be included provided a positive relationship exists or contact will confer a benefit to the inmate.

For the purpose of visitation, all the above will be included as immediate family provided a positive relationship exists. All immediate family members will be subject to criminal background investigation.

[Filed emergency 9/14/90, effective 9/26/90]
 [Published 10/3/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/3/90.

ARC 1316A
EDUCATIONAL EXAMINERS
BOARD[282]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code Supplement section 260.2(12), the Board of Educational Examiners emergency adopts, renumbers and amends rules transferred from Education Department (281), Iowa Administrative Code. [See **ARC 1315A**]

The following transferred chapters are renumbered with the titles shown below:

EDUCATION DEPARTMENT(281)	EDUCATIONAL EXAMINERS(282)
Ch 73	Ch 14, Issuance of Licenses and Endorsements
Ch 74	Ch 17, Renewal of Licenses
Ch 75	Ch 18, Conversion Information
Ch 79	Ch 19, Coaching Authorization
Ch 80	Ch 20, Evaluator License
Ch 81	Ch 15, Requirements for Special Education Endorsements
Ch 82	Ch 16, Occupational and Postsecondary Endorsements and Licenses

EDUCATIONAL EXAMINERS BOARD[282] (cont'd)

These amendments include modifications in the certification structure which will benefit new and experienced school professionals, complete and update the chapters for special education and occupational and postsecondary certification and include editorial changes brought about by Iowa Code Supplement chapter 260.

The Board of Educational Examiners finds that notice and public participation are impracticable because there is not adequate time to implement the regular rule-making process. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(2).

The Board finds also that in order to assist school personnel immediately this year, these amendments should become effective immediately upon filing; therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2).

These rules are also published herein as a Notice of Intended Action as **ARC 1319A**, to allow for public comment.

The Board of Educational Examiners adopted these rules on August 17, 1990.

These rules are intended to implement Iowa Code Supplement chapter 260.

These rules shall become effective September 14, 1990.

The following amendments are adopted to rules transferred from the Department of Education (281).

ITEM 1. Amend and renumber **281—Chapter 73 as 282—Chapter 14**, "Issuance of Licenses and Endorsements."

ITEM 2. Amend rule **282—14.11(260)** by adding a new numbered paragraph as follows:

5. Meet the recency requirement of 14.15"3."

ITEM 3. Amend rule **282—14.12(260)** by adding a new numbered paragraph as follows:

3. Meet the recency requirement of 14.15"3."

ITEM 4. Amend rule **282—14.15(260)**, paragraph "3," to read as follows:

3. Recency—Meets the requirement(s) for a valid *certificate license* but has had less than 160 days of teaching experience during the five-year period immediately preceding the date of application or has not completed six semester hours of college credit from a recognized institution within the five-year period.

To obtain the desired license, the applicant must complete recent credit, and where recent credits are required, these credits shall be taken in professional education or in the applicant's endorsement area(s).

ITEM 5. Amend rule **282—14.15(260)** by adding new numbered paragraphs following numbered paragraph "4."

5. Based on an expired Iowa certificate or license, exclusive of a conditional license. The holder of an expired Iowa license, exclusive of a conditional license or a temporary certificate shall be eligible to receive a conditional license upon application. This license shall be endorsed for the type of service authorized by the expired license on which it is based.

6. Based on an administrative decision. The bureau of practitioner preparation and licensure is authorized to issue a conditional license to applicants whose services are needed to fill positions in unique need circumstances.

ITEM 6. Amend rule **282—14.17(260)**, second unnumbered paragraph, as follows:

Has successfully completed all requirements of an approved teacher education program and is eligible for

the provisional *certificate license*, but has not applied for and been issued this *certificate license*, or who meets all requirements for the provisional license with the exception of the degree but whose degree will be granted at the next regular commencement.

ITEM 7. Amend **14.23(1)"c"(1)** and the last paragraph of the subrule as follows:

(1)Have had five years of teaching experience, three years of which must have been as a classroom teacher at the Pk-6 level.

Verified successful completion of five years of full-time teaching or administrative experience in other states, on a valid *certificate license*, shall be considered equivalent experience provided that three years must have been as a classroom teacher at the Pk-6 level.

ITEM 8. Amend **282—Chapter 14** by adding a new rule as follows:

282—14.24(260) Two-year exchange license. A two-year nonrenewable exchange license may be issued to an individual under the following conditions:

1. Has completed a state-approved teacher education program in a college or university approved by the state board of education or the state board of educational examiners in the home state which is party to the exchange certification agreement.

2. Holds a valid regular certificate or license in the home state party to the exchange certification agreement.

3. Is not subject to any pending disciplinary proceedings in the home state.

Each applicant for the exchange license shall comply with all requirements with regard to application processes and payments of licensure fees.

Each exchange license shall be limited to the area(s) and level(s) of instruction as determined by the receiving state.

Each individual receiving the two-year exchange license will have to complete any identified licensure deficiencies in order to be eligible for an initial regular license in the receiving state.

These rules are intended to implement Iowa Code Supplement chapter 260.

ITEM 9. Renumber **281—Chapter 81 as 282—Chapter 15**.

ITEM 10. Amend subrule **15.3(15)**, Option 2, second paragraph, to read as follows:

The special education director (or designee) of the area education agency must submit a letter requesting that the authorization be issued. Additionally, an official transcript reflecting the master's in social work must be included. If a person qualifies for a regular license, that must also be submitted. A temporary SPR will then be issued for one school year. An approved human relations course must be completed before the start of the next school year. The applicant must provide evidence that the human relations component has been fulfilled within the required time frame. A temporary SPR will be granted for one additional school year if the person does not qualify for a license. At the end of the second school year the applicant must submit a copy of a regular license.

A temporary SPR will be granted for two additional school years to allow the person time to complete the two years supervised practice experience that are required before taking the social work license examination and to

EDUCATIONAL EXAMINERS BOARD[282] (cont'd)

allow sufficient time to complete successfully the examination and be issued the license. At the end of the third school year, the applicant must submit a copy of a social work license issued by the Iowa department of public health.

ITEM 11. Amend 282—Chapter 15 by adding a new rule as follows:

282—15.4(260) Conditional special education license. A conditional special education license may be issued to an individual under the following conditions:

1. Holds a valid license.
2. Has completed at least one-half of the credits necessary for a special education endorsement.
3. Files a written request from the employing school official supported by the respective area education agency special education officials.
4. Statement from a college/university outlining the course work to be completed for the endorsement.

This conditional license may be issued for a term of up to three years based on the amount of preparation needed to complete the requirements for the endorsement.

ITEM 12. Amend and renumber 281—Chapter 82 as 282—Chapter 16, "Occupational and Postsecondary Endorsements and Licenses."

ITEM 13. Amend 282—Chapter 16 by adding a new rule as follows:

282—16.11(260) Conditional occupational and postsecondary licenses.

16.11(1) Conditional occupational license. A two-year conditional occupational license may be issued to an applicant who has not met all of the experience requirements for the provisional occupational license.

16.11(2) Conditional postsecondary license. A two-year conditional postsecondary license may be issued to an applicant who has not met all of the initial requirements for a provisional postsecondary license or holds the provisional or regular postsecondary license with an endorsement and is seeking an endorsement in another teaching field.

ITEM 14. Amend and renumber 281—Chapter 74 as 282—Chapter 17, "Renewal of Licenses."

ITEM 15. Amend rule 282—17.4(260) as follows:

282—17.4(260) Recency of units for renewal. If a ~~certificate~~ license is renewed at, or before date of expiration (a person may file for renewal as early as 12 months prior to expiration date), the units for renewal are acceptable if earned during the term of the ~~certificate~~ license. Persons have until August 31 of the year in which the ~~certificate~~ license expires to meet this recency requirement; however, if a person is employed at any time from July 1 to August 31 of that year, they must hold a ~~certificate~~ license valid for that position. If a ~~certificate~~ license is not renewed at date of expiration, the units for renewal must have been completed within the ~~two~~ five-year period immediately preceding the date of application for the renewal.

ITEM 16. Renumber 281—Chapter 75 as 282—Chapter 18.

ITEM 17. Renumber 281—Chapter 79 as 282—Chapter 19.

ITEM 18. Amend and renumber 281—Chapter 80 as 282—Chapter 20, "Evaluator License."

ITEM 19. Cross-references are updated accordingly to comply with renumbered paragraphs.

ITEM 20. Amend implementation chapters by substituting "260" for "256" throughout the renumbered chapters.

ITEM 21. Amend renumbered chapters by substituting "license(s)" for "certificate(s)", "licensure" for "certification", "licensed" for "certificated", "board of educational examiners" for "Iowa teaching practices commission", and "board of education" for "teacher education and certification bureau" as necessary.

These rules are intended to implement Iowa Code Supplement chapter 260.

[Filed emergency 9/14/90, effective 9/14/90]

[Published 10/3/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/3/90.

ARC 1317A

EDUCATION DEPARTMENT[281]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 256.7(5) and 281.3(15), the Department of Education hereby adopts an amendment to Chapter 41, "Education of Pupils Requiring Special Education," Iowa Administrative Code.

The purpose of this amendment is to resolve a federal compliance issue regarding an administrative dismissal of a continued appeal. The U.S. Department of Education has advised this Department that the current wording is a violation of due process.

In compliance with Iowa Code section 17A.4(2), the Department finds that public notice and participation are impracticable because the federal government requires the amendment or, if not amended, the loss of federal funds for special education.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the rule should be waived and this rule should be made effective upon filing with the Administrative Rules Coordinator on September 14, 1990, as it confers a benefit upon the public to receive federal funds for special education.

The State Board of Education adopted this rule on September 14, 1990.

This rule is also published herein under Notice of Intended Action as ARC 1318A to allow for public comment. This emergency filing permits the Department to provide evidence to the federal government for approval of the State Plan.

This rule is intended to implement Iowa Code section 281.6.

The following amendment is adopted.

Amend subrule 41.33(9), last paragraph, as follows:

An appeal may be dismissed administratively by the department when an appeal has been in continued status for more than one school year. Prior to an administrative dismissal, the ~~department~~ administrative law judge shall notify the appellant at the last known address and give the appellant an opportunity to give good cause as to why an extended continuance should be granted. An administrative dismissal issued by the ~~department~~

EDUCATION DEPARTMENT[281] (cont'd)

administrative law judge shall be without prejudice to the appellant.

[Filed emergency 9/14/90, effective 9/14/90]
[Published 10/3/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/3/90.

ARC 1315A

EDUCATION DEPARTMENT[281]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code Supplement section 256.7(5), the Iowa Department of Education transfers 281—Chapter 73, "Issuance of Certificates and Endorsements"; Chapter 74, "Renewal of Certificates"; Chapter 75, "Conversion Information"; Chapter 79, "Coaching Authorization"; Chapter 80, "Evaluator Approval"; Chapter 81, "Requirements for Special Education Endorsements"; and Chapter 82, "Occupational and Postsecondary Certification and Endorsements," to the Board of Educational Examiners (282), Iowa Administrative Code.

The transfer implements changes in licensing and rule-making authority relating to practitioner licensure and professional development for local school district and merged area schools mandated by Iowa Code Supplement chapter 260.

Because this transfer makes no substantive changes, the Department finds, pursuant to Iowa Code section 17A.4(2), that notice and public participation are unnecessary.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date should be waived and the transfer should become effective on September 14, 1990, as the statute provides that the transferred rules are under the Board of Educational Examiners.

The State Board of Education approved the transfer of these rules on August 9, 1990.

The transfer is intended to implement Iowa Code Supplement chapter 260.

This transfer shall become effective September 14, 1990.

The following transfer is adopted:

Transfer Education Department rules 281—Chapters 73, 74, 75, 79, 80, 81, and 82 to agency 282, Educational Examiners Board.

[Filed emergency 9/14/90, effective 9/14/90]
[Published 10/3/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/3/90.

ARC 1296A

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 455A.5(6)"a," the Natural Resource Commission, on September 6, 1990, adopted amendments to Chapter 91, "Waterfowl and Coot Hunting Seasons," Iowa Administrative Code.

Notice of Intended Action was published in the March 7, 1990, Iowa Administrative Bulletin as ARC 726A. An Amended Notice of Intended Action was published in the May 2, 1990, Iowa Administrative Bulletin as ARC 856A.

These rules establish season dates, bag limits, possession limits, shooting hours and closed areas for hunting waterfowl and coots for the 1990 season.

State hunting seasons on migratory birds must be set within frameworks established annually by the Fish and Wildlife Service, U.S. Department of the Interior. These frameworks specify shooting hours, bag limits and possession limits, as well as season lengths and outside dates. These frameworks were finalized by the Service on August 24, 1990. Therefore, adoption of a final rule by the Department could not take place prior to this date.

The Department finds that these rules confer a benefit and remove a restriction on a segment of the public by becoming effective immediately, and that the usual effective date of these rules would unnecessarily restrict the public by delaying the opening of the waterfowl and coot seasons. Therefore, these rules shall become effective upon filing with the office of the Administrative Rules Coordinator as provided in Iowa Code section 17A.5(2)"b"(2).

There are no major changes from the Amended Notice of Intended Action.

These rules are intended to implement Iowa Code sections 109.38, 109.39 and 109.48.

ITEM 1. Amend rule 571—91.1(109), introductory paragraph, to read as follows:

571—91.1(109) Ducks (split season). Open season for hunting ducks shall be October 7 6 to October 8 7, 1989 1990; October 21 20 to November 17 16, 1989 1990, in that portion of the state lying north of a line beginning on the Nebraska-Iowa border at State Highway 175, southeast to State Highway 37, east to U.S. Highway 59, south to I-80 and along I-80 east to the Iowa-Illinois border; and October 21 20 to October 27 26, 1989 1990, November 4 3 to November 26 25, 1989 1990, in that portion of the state lying south of a line beginning on the Nebraska-Iowa border at State Highway 175, southeast to State Highway 37, east to U.S. Highway 59, south to I-80 and along I-80 east to the Iowa-Illinois border. Shooting hours are one-half hour before sunrise to sunset each day.

ITEM 2. Amend rule 571—91.2(109), introductory paragraph, to read as follows:

571—91.2(109) Coots (split season). Open season for hunting coots shall be October 7 6 to October 8 7, 1989 1990, October 21 20 to November 17 16, 1989 1990, in that portion of the state lying north of a line beginning on the Nebraska-Iowa border at State Highway 175, southeast to State Highway 37, east to U.S. Highway 59, south to I-80 and along I-80 east to the Iowa-Illinois border; and October 21 20 to October 27 26, 1989 1990; November 4 3 to November 26 25, 1989 1990, in that portion of the state lying south of a line beginning on the Nebraska-Iowa border at State Highway 175, southeast to State Highway 37, east to U.S. Highway 59, south to I-80 and along I-80 east to the Iowa-Illinois border. Shooting hours are one-half hour before sunrise to sunset each day.

ITEM 3. Amend rule 571—91.3(109), introductory paragraph, to read as follows:

NATURAL RESOURCE COMMISSION[571] (cont'd)

571—91.3(109) Geese. The open season for hunting Canada and white-fronted geese and brant shall be from September ~~30~~ 29 to November ~~December 13~~ 7, 1989 1990, and snow geese and brant shall be from September ~~30~~ 29 to December ~~13~~ 17, 1989 1990, and white-fronted geese shall be September ~~30~~, 1989, to December ~~8~~, 1989, except for that part of the state lying south and west of a line running north from the Iowa-Missouri state line along U. S. Highway 71 to I-80, west on I-80 to U. S. Highway 59, north on U.S. Highway 59 to State Highway 37, then northwest on State Highway 37 to State Highway 175, then west on State Highway 175 to the Nebraska-Iowa border, where the season shall be October ~~14~~ 13 to November ~~December 27~~ 21, 1989 1990, for Canada and white-fronted geese and brant, October ~~14~~ 13, 1989, to January ~~December 1~~ 31, 1990, for snow geese and brant, and October ~~14~~ to December ~~22~~, 1989, for white-fronted geese. Shooting hours are one-half hour before sunrise to sunset each day.

ITEM 4. Amend subrule 91.4(2) by adding the following new paragraph:

k. Area eleven. Starting at the junction of the navigation channel of the Mississippi River and the mouth of the Maquoketa River in Jackson County, proceeding southwesterly along the high-water line on the west side of the Maquoketa River to U.S. Highway 52, south along U.S. Highway 52 to the intersection with county road Z-40, south on county road Z-40 to the junction with U.S. Highway 64, east on U.S. Highway 64 to the Sioux Line Railroad at Sabula, north and west along the Sioux Line Railroad to the east edge of section 27, township 85N, range 6 east, north to the intersection of sections 27 and 22, west along the common boundary of sections 27 and 22 and sections 28 and 21, township 85N, range 6 east, to the Green Island levee, northeast along a line following the Green Island levee to the center of the navigational channel of the Mississippi River, north along the center of the navigational channel to the point of beginning.

These rules are intended to implement Iowa Code sections 109.38, 109.39 and 109.48.

[Filed emergency after Notice 9/13/90, effective 9/13/90]
[Published 10/3/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/3/90.

ARC 1295A

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 455A.5(6)"a," the Natural Resource Commission, on September 6, 1990, adopted amendments to Chapter 96, "Pheasant, Quail and Gray (Hungarian) Partridge Hunting Seasons," Iowa Administrative Code.

Notice of Intended Action was published in the March 7, 1990, Iowa Administrative Bulletin as ARC 725A.

These rules establish season dates, shooting hours, daily bag limits, possession limits and areas open to hunting.

The Department gave notice and provided for public participation as required by Iowa Code section 17A.4. Due to the timing of the Commission meeting and the early opening dates of pheasant, quail and gray partridge seasons, it is imperative that the final amendments be filed under the emergency provisions of the Iowa Administrative Procedure Act.

The Department conducts its upland wildlife surveys during the first two weeks of August and the population status of pheasant, quail and gray partridge was not known until results of these surveys were analyzed. In order to provide wildlife management on a biological basis, the Commission could not take final action on the seasons until survey information was available in late August.

The Department furthermore finds that these rules confer a benefit and remove a restriction on a segment of the public by becoming effective immediately, and that the usual effective date of these rules would unnecessarily restrict the public by delaying the opening of the pheasant, quail and gray partridge seasons. Therefore, these rules shall become effective upon filing with the office of the Administrative Rules Coordinator as provided in Iowa Code section 17A.5(2)"b"(2).

There are no changes from the Notice of Intended Action.

These rules are intended to implement Iowa Code sections 109.38, 109.39 and 109.48.

The following amendments are adopted:

ITEM 1. Amend subrule 96.1(1) to read as follows:

96.1(1) Open season. Open season for hunting pheasants shall be October ~~28~~ 27, 1989 1990, through January 10, 1990 1991. Bag limit 3 cock birds daily; possession limit 12 cock birds. Shooting hours shall be from 8 a.m. to 4:30 p.m. Entire state open.

ITEM 2. Amend rule 571—96.2(109) to read as follows:

571—96.2(109) Gray (Hungarian) partridge season. Open season for hunting gray partridge shall be October ~~7~~ 6, 1989 1990, through January 31, 1990 1991. Bag limit 8 birds daily; possession limit 16 birds. Shooting hours shall be from 8 a.m. to 4:30 p.m. Entire state open.

ITEM 3. Amend rule 571—96.3(109) to read as follows:

571—96.3(109) Quail season. Open season for hunting quail shall be October ~~28~~ 27, 1989 1990, through January 31, 1990 1991. Bag limit 8 birds daily; possession limit 16 birds. Shooting hours shall be from 8 a.m. to 4:30 p.m. Entire state open.

These rules are intended to implement Iowa Code sections 109.38, 109.39, and 109.48.

[Filed emergency after Notice 9/13/90, effective 9/13/90]
[Published 10/3/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/3/90.

ARC 1304A
COLLEGE STUDENT AID
COMMISSION[283]

Adopted and Filed

Pursuant to the authority of 1990 Iowa Acts, Senate File 2423[ch1272], section 63, the College Student Aid Commission adopts a new Chapter 27, "Iowa Grant Program," Iowa Administrative Code.

The new chapter summarizes the procedures to be followed in the administration of the Iowa Grant Program.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 11, 1990, as **ARC 1028A**. This rule is identical to that published under the Notice with the exception of clarification of sentence structure and numbering style.

The rule was adopted in final form on September 11, 1990, and will become effective on November 7, 1990.

This rule is intended to implement Iowa Code chapter 261 as amended by 1990 Iowa Acts, Senate File 2423 [ch 1272], sections 60 to 64.

The following new chapter is adopted:

CHAPTER 27
IOWA GRANT PROGRAM

283—27.1(261) State-supported grants. The Iowa grant program is a state-supported and administered grant based on financial need to Iowa residents enrolled at approved institutions of postsecondary education in Iowa.

27.1(1) Definitions. As used in this chapter:

"Accredited higher education institution" means any public or private institution of higher learning located in Iowa which is accredited by the North Central Association of Colleges and Secondary Schools.

"Financial need" means the difference between the student's financial resources, including resources available from the student's parents and the student, as determined by a completed parent's or student's financial statement, and the student's anticipated expenses while attending the accredited higher education institution. Any federal, state, institutional, and private aid, other than work-study, shall also be considered an available resource. Financial need shall be determined at least annually. The application form must be received by the needs analysis processor by the deadline date specified by the commission.

"Full-time resident student" means an individual resident of Iowa who is enrolled at an accredited higher education institution in a course of study including at least 12 semester hours or the trimester or quarter equivalent. "Course of study" does not include correspondence courses.

"Part-time resident student" means an individual resident of Iowa who is enrolled at an accredited higher education institution in a course of study including at least three semester hours or the trimester or quarter equivalent. "Course of study" does not include correspondence courses.

"Qualified student" means a resident student who has established financial need and who is making satisfactory progress toward graduation.

"Tuition and mandatory fees" means those college costs paid annually by all students enrolled on a full-time basis,

such costs to be reported annually to the commission by each participating institution.

27.1(2) Student eligibility. A recipient must be an Iowa resident who is enrolled for at least three semester hours or the trimester or quarter equivalent in a program leading to a degree from an eligible Iowa institution. The criteria used by the state board of regents to determine residency for tuition purposes, 681 IAC 1.4(262), are adopted for this program.

27.1(3) Self-supporting applicants. For purposes of determining financial independence, the commission has adopted the definition in use by the U.S. Department of Education for the federally funded student assistance programs. Self-supporting applicants must certify their status on the financial aid form and supply any required documentation to the educational institution.

27.1(4) Award limits and eligibility requirements.

a. A grant may be awarded to any qualified person who is accepted for admission or is enrolled for at least three semester hours, or the trimester or quarter equivalent in a program leading to a degree from an approved, accredited higher education institution and who demonstrates financial need.

b. The annual amount of the grant to a full-time student shall not exceed a student's financial need or \$1,000, whichever is less.

c. The maximum amount of a grant to a part-time student shall be prorated by dividing the maximum yearly grant amount by 24 semester hours or the trimester or quarter equivalent, and multiplying that amount by the number of hours the student is enrolled.

d. Grants shall be awarded on an annual basis and shall be credited by the institution against the student's tuition, fees, and room and board charges at the beginning of each term in equal installments upon certification that the eligible student is enrolled.

e. If, after crediting the amount of the grant to the student's tuition, fees, and, if applicable, room and board charges, a credit balance remains, the institution may distribute the grant balance to the student who may use the proceeds for other bona fide education expenses such as books, equipment, and transportation.

f. If a student receiving a grant under the program discontinues attendance before the end of any academic period, but after receiving payment of grant funds for the academic period, the entire amount of any refund due the student, up to the amount of any payments made by the state, shall be distributed as follows:

(1) If an initial institutional allocation was made and funds are available due to the refund, the institution may offer additional awards, but in no case may an institution exceed its annual allocation.

(2) If institutional allocations are not made, then any refunds must be returned to the commission.

27.1(5) Extent of grant. A qualified full-time student may receive grants for not more than eight semesters of undergraduate study or the trimester or quarter equivalent. A qualified part-time resident student may receive grants for not more than 16 semesters of undergraduate study or the trimester or quarter equivalent.

27.1(6) Application process.

a. Eligible students shall apply for this grant through the use of an approved financial aid form, which uses the federally accepted method of needs analysis.

b. Institutions shall coordinate aid packages to ensure that this grant program supplements rather than

COLLEGE STUDENT AID COMMISSION[283] (cont'd)

supplants federal and institutional gift aid awards and shall report need figures to the commission.

c. The institution shall clearly identify the Iowa grant on the student's aid award notice.

d. A student shall accept all available federal and state grants before being considered for grants under this program.

27.1(7) Full year of study. For purposes of this program, the commission has defined full year of study as either three quarters or two semesters. Grant payments are prorated according to this definition.

27.1(8) Priority for grants.

a. Applicants are ranked in order of the estimated amount which the family reasonably can be expected to contribute toward college expenses; and awards are granted to those who demonstrate need in order of family contribution, from lowest to highest, insofar as funds permit.

b. Funds will be allocated to the sectors according to the appropriations language.

c. If funds are insufficient to pay all approved grants, applicants who have the greatest demonstrated financial need, based on a total family contribution, will receive priority assistance.

d. If funds are insufficient to help all students with no means of contribution to their educational expenses, institutional allocations will be made based on that institution's applicant profiles as a percentage of the total sector profiles, and institutional aid administrators will be called on to select students to receive grants.

27.1(9) Award notification. A grant recipient is notified of the award by the educational institution to which application is made. The institution is responsible for completing necessary verification and for coordinating other aid to ensure compliance with student eligibility requirements and allowable award amounts. The institution reports changes of student eligibility to the commission.

27.1(10) Award transfers and adjustments.

a. Awards may be transferred among eligible institution(s) unless funding limitations require institutional allocations.

b. Recipients are responsible for promptly notifying the appropriate institution of any change in enrollment or financial situation. The educational institution will make necessary changes and notify the commission.

27.1(11) Restriction. A student who is in default on a Stafford Loan, SLS Loan, or a Perkins/National Direct/National Defense Student Loan or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for assistance under the Iowa grant program. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in appeal under the procedure set forth in 283—Chapter 3, Iowa Administrative Code.

27.1(12) Institutional reporting. The commission will monitor the program according to this chapter and will require participating postsecondary institutions that receive funds for enrolled students to furnish any information necessary for the implementation or administration of the program.

This rule is intended to implement Iowa Code chapter 261 as amended by 1990 Iowa Acts, Senate File 2423 [ch 1272], sections 60 to 64.

[Filed 9/13/90, effective 11/7/90]

[Published 10/3/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/3/90.

ARC 1320A

LAW ENFORCEMENT ACADEMY[501]

Adopted and Filed

Pursuant to the authority of Iowa Code Supplement section 80B.11, the Iowa Law Enforcement Academy hereby amends Chapter 1, "Organization and Administration," and adopts a new Chapter 11, "Salvage Vehicle Examinations," Iowa Administrative Code.

Rule 501—1.1(80B) is amended by adding definitions of "Salvage vehicle examination" and "Salvage vehicle examiner." Chapter 11 establishes training and eligibility standards for law enforcement officers who desire to be certified to conduct salvage vehicle examinations.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 27, 1990, as ARC 985A. Public comments were solicited and a public hearing was held on July 17, 1990. One individual, through correspondence, was critical of the retraining requirement standards. The adopted amendments are identical to those published under Notice.

These rules will become effective November 7, 1990.

These rules are intended to implement Iowa Code Supplement sections 80B.11 and 321.52.

The following amendments are adopted:

ITEM 1. Amend rule 501—1.1(80B) by adding, in alphabetical sequence, the following definitions:

"Salvage vehicle examination" means a component parts review and a salvage vehicle theft examination conducted by a law enforcement officer pursuant to Iowa Code Supplement section 321.52(4)"b" and "c."

"Salvage vehicle examiner" means a law enforcement officer certified by the Iowa law enforcement academy to conduct vehicle examinations pursuant to Iowa Code Supplement section 321.52(4)"b" and "c."

ITEM 2. The following new chapter is adopted:

CHAPTER 11 SALVAGE VEHICLE EXAMINATIONS

501—11.1(80B,321) **Minimum standards to conduct salvage vehicle examinations.** Eligibility requirements for certification as a salvage vehicle examiner:

11.1(1) Only certified law enforcement officers of agencies which agree to participate in the salvage vehicle examination program are eligible to obtain certification or recertification as a salvage vehicle examiner.

11.1(2) A law enforcement officer must be certified in both component parts review and salvage vehicle theft examinations to be eligible to conduct salvage vehicle examinations.

LAW ENFORCEMENT ACADEMY[501] (cont'd)

501—11.2(80B,321) Salvage vehicle examiner initial certification. A law enforcement officer may be initially certified by the academy in one of the following ways:

11.2(1) A law enforcement officer may be certified by the council because of extensive training, background and experience to conduct salvage vehicle examinations.

11.2(2) A law enforcement officer may be certified by the council upon completion of an academy-approved salvage vehicle examination training course.

501—11.3(80B,321) Salvage vehicle examination training course. Those law enforcement officers seeking certification through training must successfully complete a minimum 24-hour salvage vehicle examination course approved by the academy to include, but not be limited to, the following topics and skills:

1. Administrative procedures in component parts reviews and vehicle theft examinations which constitute a salvage vehicle examination.

2. Preexamination procedures for salvage vehicle examinations.

3. Examination procedures for salvage vehicle examinations.

4. Completion of prescribed salvage vehicle examination forms.

5. Demonstrated understanding and ability to conduct a salvage vehicle examination.

6. The officer must successfully pass a written test on salvage vehicle examinations.

501—11.4(80B,321) Salvage vehicle examiner recertification requirements.

11.4(1) Salvage vehicle examiners must be recertified every two years from the date of their last certification.

11.4(2) Recertification shall require one of two training courses depending upon the salvage vehicle examiner's experience.

a. Salvage vehicle examiners who have conducted 48 or more salvage vehicle examinations since their certification or recertification date are required to successfully complete a minimum four-hour salvage vehicle refresher course approved by the academy.

b. Previously certified salvage vehicle examiners who have not conducted a minimum 48 or more salvage vehicle examinations since their certification or recertification date must retake the initial salvage vehicle examination course to be recertified.

c. Recertification extensions. The council may grant a recertification extension of time for good cause.

These rules are intended to implement Iowa Code Supplement sections 80B.11 and 321.52.

[Filed 9/14/90, effective 11/7/90]

[Published 10/3/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/3/90.

ARC 1289A
LIVESTOCK HEALTH
ADVISORY COUNCIL[521]

Adopted and Filed

Pursuant to the authority of Iowa Code section 267.5, subsection 3, the Livestock Health Advisory Council on July 6, 1990, rescinded Chapter 1 and adopted the

following new Chapter 1, "Recommendation," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin, May 30, 1990, as **ARC 915A**. The new recommendation allocates a \$300,000 appropriation among various livestock disease research projects at the Iowa State University College of Veterinary Medicine. No comments were received, either written or verbal.

The Council made two changes from the recommendation as published in the Notice: The proposal for study of impact of swine drinking water quality on the cost and efficiency of swine production in Iowa was instead allocated as an increase to the mystery pig disease project. The proposal for study of epidemiology of turkey loadout deaths was changed to study of dietary potassium supplementation in growing turkeys. In all other respects, the recommendation as published in the Notice was adopted without change.

This recommendation is intended to implement Iowa Code section 267.5, subsection 3.

The recommendation will become effective November 7, 1990.

Rescind 521—Chapter 1 and insert in lieu thereof the following:

CHAPTER 1
RECOMMENDATION

521—1.1(267) Recommendation for fiscal year 1990-1991. Iowa Code chapter 267 makes an appropriation of \$300,000 for fiscal year 1990-1991 to be used by the Iowa State University College of Veterinary Medicine for research into livestock disease. The livestock health advisory council recommends that this appropriation for fiscal year 1990-1991 be applied for research on the following:

1. \$11,074 for Haemophilus somnus.
2. \$14,445 for bovine respiratory disease - Haemophilus somnus and Pasteurella multocida.
3. \$13,483 for sheep pneumonia.
4. \$12,038 for use of tests for oxidative stress and micronutrient levels for prediction or diagnosis of reduced disease resistance.
5. \$19,000 for bovine viral enteric disease.
6. \$19,000 for control of TGE in swine.
7. \$18,344 for pseudorabies virus.
8. \$11,557 for bovine respiratory syncytial virus.
9. \$33,917 for mystery pig disease.
10. \$20,225 for bovine pinkeye.
11. \$14,296 for bovine respiratory disease.
12. \$30,000 for swine pneumonia.
13. \$17,335 for immunomodulators in bovine respiratory disease.
14. \$19,975 for Johne's disease (paratuberculosis) in cattle.
15. \$13,964 for Newcastle disease.
16. \$12,038 for rotaviral infections of turkeys.
17. \$7,752 for dietary potassium supplementation in growing turkeys.
18. \$11,557 for avian mycoplasmas.

[Filed 9/12/90, effective 11/7/90]

[Published 10/3/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/3/90.

ARC 1299A
REVENUE AND FINANCE
DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.22 and 421.14, the Iowa Department of Revenue and Finance hereby adopts amendments to Chapter 9, "Filing and Extension of Tax Liens and Charging Off Uncollectible Tax Accounts," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 8, 1990, as **ARC 1136A**.

The amendments to Chapter 9 implement 1990 Iowa Acts, House File 2551 [ch 1232], sections 8, 9, 10 and 27, which provide that the ten-year lien period for unpaid taxes begins the day the last assessment for additional tax was made, or in case of an extension of the lien, the extension must be made before the ten-year lien period expires.

These rules are identical to those published under Notice of Intended Action.

These amendments will become effective November 7, 1990, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

The amendments are intended to implement Iowa Code chapters 17A and 421 and 1990 Iowa Acts, House File 2551 [ch 1232], sections 8, 9, 10 and 27.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [amendments to ch 9] is being omitted. These rules are identical to those published under Notice as **ARC 1136A**, IAB 8/8/90.

[Filed 9/13/90, effective 11/7/90]
 [Published 10/3/90]

[For replacement pages for IAC, see IAC Supplement, 10/3/90.]

ARC 1298A
REVENUE AND FINANCE
DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14 and 422.68(1), the Iowa Department of Revenue and Finance hereby adopts amendments to Chapter 52, "Filing Returns, Payment of Tax and Penalty and Interest," Chapter 53, "Determination of Net Income," and Chapter 59, "Determination of Net Income," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 8, 1990, as **ARC 1138A**.

The amendment to subrule 52.4(5) is to implement 1990 Iowa Acts, Senate File 2114 [ch1171], section 5, which makes the Iowa research activities credit permanent

even though the federal research activities credit may be repealed or allowed to expire.

The new subrule added to rule 701—53.2(422) is added to implement 1990 Iowa Acts, Senate File 2114, section 6, which restricts the carryback or carryforward of a net operating loss if the carryback or carryforward of a net operating loss would be disallowed for federal income tax purposes under sections 172(b)(1)(M) and 172(m) of the Internal Revenue Code.

The amendments to rule 701—53.11(422) and rule 701—59.8(422) are to implement 1990 Iowa Acts, Senate File 2413 [ch1251], section 53, which creates an additional deduction of 65 percent not to exceed \$20,000 of the first 12 months' wages paid to certain criminal offenders.

These rules are identical to those published under Notice of Intended Action.

These amendments will become effective November 7, 1990, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

The amendments are intended to implement Iowa Code chapter 422 as amended by 1990 Iowa Acts, Senate File 2114 and Senate File 2413.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [amendments to chs 52, 53 and 59] is being omitted. These rules are identical to those published under Notice as **ARC 1138A**, IAB 8/8/90.

[Filed 9/13/90, effective 11/7/90]
 [Published 10/3/90]

[For replacement pages for IAC, see IAC Supplement, 10/3/90.]

ARC 1297A
REVENUE AND FINANCE
DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14 and 422.68(1), the Iowa Department of Revenue and Finance hereby adopts amendments to Chapter 52, "Filing Returns, Payment of Tax and Penalty and Interest," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 8, 1990, as **ARC 1137A**.

The amendment to subrule 52.5(4) is to clarify that the credits that are deducted from the current year tax liability in order to determine the amount of minimum tax credit that can be used are those credits set forth in Iowa Code section 422.33 and not the motor fuel tax credit set forth in Iowa Code section 422.110.

The additional material added to subrule 52.5(4) is to provide guidance to the taxpayer in those situations where the taxpayer corporation joins or leaves a consolidated return or is merged into another corporation.

These rules are identical to those published under Notice of Intended Action.

REVENUE AND FINANCE DEPARTMENT[701] (cont'd)

These amendments will become effective November 7, 1990, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

The amendments are intended to implement Iowa Code section 422.33(7).

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [52.5(4)] is being omitted. These rules are identical to those published under Notice as ARC 1137A, IAB 8/8/90.

[Filed 9/13/90, effective 11/7/90]
[Published 10/3/90]

[For replacement pages for IAC, see IAC Supplement, 10/3/90.]

ARC 1311A

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to Iowa Code section 476.2, the Utilities Board (Board) gives notice that on September 7, 1990, the Board issued an order in Docket No. RMU-89-24, In Re: Complaint Procedures, "Order Adopting Rules."

On November 7, 1989, the Board issued an order in this docket commencing a rule making to consider amendments to 199 IAC 6.5(1), 19.4(1)"i," 20.4(2), 21.4(1)"f," and 22.4(1)"b." The proposed rule making was published in the Iowa Administrative Bulletin on November 29, 1989, as ARC 460A. Written comments were filed on or before December 19, 1989, by Peoples Natural Gas Company, United Cities Gas Company, Union Electric Company, Winnebago Cooperative Telephone Association, Iowa Telephone Association, Iowa Public Service Company, Iowa-Illinois Gas and Electric Company, Iowa Power and Light Company, Iowa Electric Light and Power Company, Iowa Association of Municipal Utilities, Iowa Association of Electric Cooperatives (IAEC), GTE North Incorporated, Central Telephone Company, Interstate Power Company, AT&T Communications of the Midwest, Inc., MCI Telecommunications Corporation, and the Consumer Advocate Division of the Iowa Department of Justice (Consumer Advocate). On December 21, 1989, IAEC filed a request for an oral presentation. On January 9, 1990, the Board granted IAEC's request and an oral presentation was held on March 12, 1990.

The written comments filed in this docket suggested that a substantial number of utilities found the proposed rules regarding the inclusion of a bill insert or notice on the bill unworkable. In the oral presentation, several utilities recommended the inclusion of alternative language in the notice for those utilities with specific areas regulated by the Board. Therefore, the Board is adopting only that part of the proposed rules placed under Notice which provide that the complainant or the public utility may also petition the Board to initiate formal complaint procedures and clarify customer information and customer contact employee qualifications. The Board is terminating the remainder of ARC

460A and renoticing the rules requiring that a utility notify customers of the complaint resolution process by periodic bill inserts for additional comments. (See ARC 1312A herein).

Consumer Advocate objected to the Board's rescission of the requirement that complaints be effectively handled in a manner which "will obviate the necessity of the customer's preliminary repetition of the entire complaint to employees lacking in ability and authority to take appropriate action." Consumer Advocate contended the requirement provides a valuable protection to consumers and should not be eliminated. The Board finds merit in Consumer Advocate's recommendation and will reinsert the requirement with minor language modifications for clarity.

Several of the commenters questioned whether the proposed rules required the utility to reveal to the customer the actual names of its employees. The Board's concern is accountability and not that the bill form contain an employee's name. Therefore, the finally adopted rules are modified to require that when a customer calls the utility, the employee should provide identification to the customer which will enable the customer to reach that employee again if needed. The modification will allow the utility to provide its employees with unique "pseudonyms" in lieu of revealing the actual name of employees.

The finally adopted rules have been revised to incorporate certain revisions proposed by the parties filing comments. The Board has also made minor language modifications for clarity. The Board does not believe additional public comment on the adopted rules is necessary, because the changes made to the rules are a logical outgrowth of the prior Notice and public hearing.

The rules are intended to implement Iowa Code section 476.3 and will become effective on November 7, 1990, pursuant to Iowa Code section 17A.5.

The following amendments are adopted:

ITEM 1. Amend subrule 6.5(1), first sentence, to read as follows:

6.5(1) If either party or the consumer advocate, complainant, or the public utility is dissatisfied with the proposed resolution, a request for formal complaint proceedings may be made.

ITEM 2. Rescind subrule 19.4(1), paragraph "i," and insert in lieu thereof the following:

i. Inquiries for information or complaints to a utility shall be resolved promptly and courteously. Employees who receive customer telephone calls and office visits shall be qualified and trained in screening and resolving complaints, to avoid a preliminary recitation of the entire complaint to employees without ability and authority to act. The employee shall provide identification to the customer which will enable the customer to reach that employee again if needed.

ITEM 3. Rescind subrule 20.4(2) and insert in lieu thereof the following:

20.4(2) Customer contact employee qualifications. Inquiries for information or complaints to a utility shall be resolved promptly and courteously. Employees who receive customer telephone calls and office visits shall be qualified and trained in screening and resolving complaints, to avoid a preliminary recitation of the entire complaint to employees without ability and authority to act. The employee shall provide identification to the

UTILITIES DIVISION[199] (cont'd)

customer which will enable the customer to reach that employee again if needed.

ITEM 4. Rescind subrule 21.4(1), paragraph "f," and insert in lieu thereof the following:

f. Inquiries for information or complaints to a utility shall be resolved promptly and courteously. Employees who receive customer telephone calls and office visits shall be qualified and trained in screening and resolving complaints, to avoid a preliminary recitation of the entire complaint to employees without ability and authority to act. The employee shall provide identification to the customer which will enable the customer to reach that employee again if needed.

ITEM 5. Rescind subrule 22.4(1), paragraph "b," and insert in lieu thereof the following:

b. Inquiries for information or complaints to a utility shall be resolved promptly and courteously. Employees who receive customer telephone calls and office visits shall be qualified and trained in screening and resolving complaints, to avoid a preliminary recitation of the entire complaint to employees without ability and authority to act. The employee shall provide identification to the customer which will enable the customer to reach that employee again if needed.

[Filed 9/14/90, effective 11/7/90]

[Published 10/3/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/3/90.

EFFECTIVE DATE DELAY

[Pursuant to §17A.8(9)]

AGENCY

RULE

EFFECTIVE DATE
DELAY

Human Services Department[441]

Subrule 85.8(2) to 85.8(5)
(IAB 8/8/90, ARC 1120A)

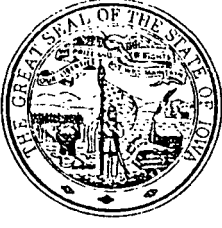
Effective date of October 1, 1990,
delayed until adjournment of the
1991 Session of the General
Assembly by the Administrative
Rules Review Committee at its
September 12, 1990, meeting.

PUBLIC SAFETY DEPARTMENT[661]

At its September 11th, 1990 meeting the committee voted to object to the "emergency" adoption and implementation of ARC 1168A item one, amending 661—6.4(2)"d," published IAB 8/22/90, on the grounds that action was unreasonable. It was the opinion of the committee that the ground cited for emergency implementation under section 17A.5(2)"b", that the rule conferred a benefit on the public, was inappropriate. The committee believed that the rule may benefit the department, but that it offers no tangible benefit to the general public. In addition, the committee believed that the policy established in that filing was so significant that a compelling need exists to have notice and public participation before that policy is implemented.

In essence this filing provides that all locked containers in vehicles impounded for more than 24 hours will be opened and inventoried even if the locks on the vehicle or container must be broken. The committee does note that this provision applies only to vehicles impounded by the highway patrol and only to containers where the officer cannot readily ascertain the contents without opening the container. This rule-making is based on a recent decision of the United States Supreme Court, Florida v. Wells, 110 S. Ct 1632 (1990), where the court held that closed containers in an impounded vehicle could not be opened and inventoried unless the law enforcement agency had a standard policy dealing with the opening of closed containers. Based on this decision the department decided to immediately implement an emergency rule requiring the opening of all containers.

The substance of this provision is based on the Court's ruling but the procedure of emergency filing this requirement, without an opportunity for public participation and legislative review is unreasonable. The Supreme Court stated that law enforcement agencies could have a policy that allows them to open sealed containers; the opinion did not require that containers be opened. This is a policy question that deserves an opportunity for public comment prior to its implementation.



State
of Iowa
Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER 39

- WHEREAS,** natural and technological disasters are an ever present and continuing threat to the people of the State of Iowa; and
- WHEREAS,** these disasters can cause substantial losses to the citizens of the state, in both lives and property; and
- WHEREAS,** through effective, planned response by state and local governments, the destructive nature of these disasters can be mitigated; and
- WHEREAS,** an effective statewide Hazard Mitigation Program must be centrally orchestrated, but involve all levels of government; and
- WHEREAS,** government officials must continually strive to promote Hazard Mitigation, and to develop new cost reducing initiatives.
- NOW, THEREFORE,** I, Terry E. Branstad, Governor of the State of Iowa, by virtue of the authority vested in me, by the laws and Constitution of the State of Iowa, and in accordance with the provisions of Chapter 29C, Disaster Services and Public Disorders, 1989 Code of Iowa, do hereby form a State Hazard Mitigation Team.
- FURTHER,** I hereby designate the following state agencies and permanent members to participate in all Hazard Mitigation Team activities:
- I. Department of Public Defense, Disaster Services Division, who will act as chair for the Hazard Mitigation Team and will coordinate activities of the Team;
 - II. Department of General Services;

- III. Department of Natural Resources;
- IV. Department of Public Health;
- V. Department of Agriculture and Land Stewardship;
- VI. Department of Justice;
- VII. Department of Commerce;
- VIII. Department of Management;
- IX. Department of Revenue and Finance;
- X. Department of Transportation;
- XI. Department of Economic Development;
- XII. Department of Education.

FURTHER,

I do hereby declare that other state agencies will participate on the Hazard Mitigation Team on an as needed basis, as requested by the chair; and

FURTHER,

I do hereby authorize the head of each agency to delegate the participation on the Hazard Mitigation Team assigned to him/her; and

FURTHER,

I do hereby authorize the Hazard Mitigation Team to request participation by local governments, federal government, and private industry, as needed; and

FURTHER,

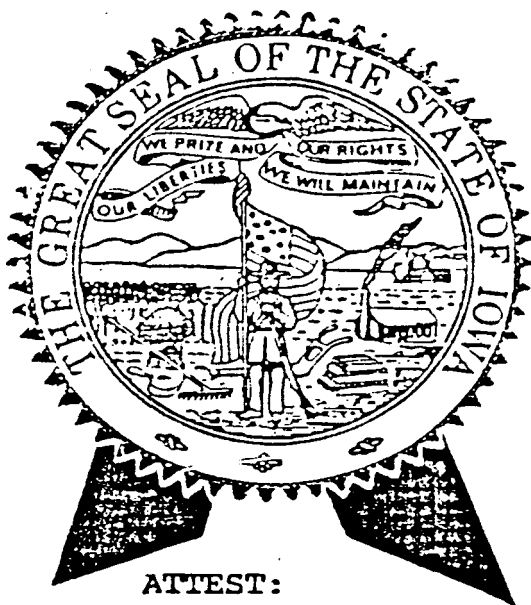
I do hereby stipulate the following as specific responsibilities of the Hazard Mitigation Team:

- I. Determine the capabilities of each state agency to address various hazards, including what legal authority each agency has and what programs and funding sources are available to address mitigation, preparedness, response, and recovery activities;
- II. Provide assistance to the Disaster Services Division to develop, implement, and update the State Multi-Hazard Mitigation Plan;
- III. Coordinate activities of state agencies to reduce the impact of hazard potentials within the state;

- IV. Recommend methods to improve mitigation, preparedness, response, and recovery activities of state agencies, local governments, federal government, and private industry;
- V. Develop the means to communicate each state agency's capability to address hazards, to persons, agencies, or governments who might utilize that information; and

FINALLY,

I do hereby also stipulate that the Hazard Mitigation Team can assume additional responsibilities in the area of Hazard Mitigation not specified heretofore.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 12th day of September in the year of our Lord one thousand nine hundred and ninety.


Wm E. Brewster

 GOVERNOR

ATTEST:

Elaine Baxter

 SECRETARY OF STATE

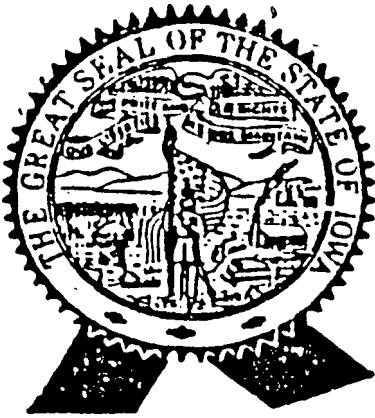


State of Iowa
Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

PROCLAMATION OF DISASTER EMERGENCY

- WHEREAS, another severe storm system passed through Iowa, beginning on August 24, and continues to produce heavy flooding on an already saturated ground,
- WHEREAS, the effect of this storm was significant flooding damage throughout Bremer, Johnson, Winneshiek and Worth Counties in Iowa; and
- WHEREAS, reports from the local officials have been verified by the Iowa Disaster Services; and
- WHEREAS, assistance may be necessary from State agencies for services beyond local resources in damage assessment, emergency repair and restoration of public facilities, debris removal, security, and clean-up activities; and
- WHEREAS, appropriate federal assistance programs may be requested upon further documentation of damages and in compliance with application guideline procedures;
- NOW THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, do hereby proclaim Bremer, Johnson, Winneshiek and Worth Counties, for the aforementioned reasons, a state of disaster emergency. This proclamation of Disaster Emergency authorizes local and State government to render good and sufficient aid to assist these areas in their time of need.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 13th day of September in the year of our Lord one thousand nine hundred ninety.

Terry E. Branstad
GOVERNOR

Attest:

Elaine Baxter
SECRETARY OF STATE

SUMMARY OF DECISIONS - THE SUPREME COURT OF IOWAFILED SEPTEMBER 19, 1990

NOTE: Copies of these opinions may be obtained from the Supreme Court Clerk, State Capitol Building, Des Moines, IA, 50319, for a fee of 40 cents per page.

No. 88-1199. STATE v. STESSMAN.

Appeal from the Iowa District Court for Black Hawk County, Joseph C. Keefe and Roger F. Peterson, Judges. **APPEAL AFFIRMED IN PART AND DISMISSED IN PART.** Considered by McGiverin, C.J., and Harris, Larson, Schultz and Carter, JJ. Opinion by McGiverin, C.J. (8 pages \$3.20)

The defendant appeals from a deferred judgment after a verdict finding him guilty of fraudulent practices and theft. **OPINION HOLDS:** I. Because the defendant received a deferred judgment, there has been no final judgment entered in this case. Therefore no right of appeal exists. Under these circumstances our case law also does not permit a certiorari proceeding. There is no merit to the defendant's suggestion that he should be allowed to appeal because he did not consent to a deferred judgment. For these reasons, we sustain the State's motion to dismiss the appeal on all matters occurring prior to and during trial. II. The only remaining question is whether we may consider the defendant's appeal of the restitution order accompanying the deferred judgment. We hold that a criminal defendant may apply for discretionary review to challenge a restitution order accompanying or following a deferred judgment order. In the present case we grant discretionary review of the restitution order involved here. III. Addressing the merits of the restitution order, we affirm the restitution requirement imposed by the district court.

No. 90-580. **COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT
v. BAUERLE.**

On review of the report of the Grievance Commission. **LICENSE SUSPENDED.** Considered by Harris, P.J., and Larson, Schultz, Lavorato, and Andreasen, JJ. Opinion by Harris, J. (7 pages \$2.80)

Bauerle has appealed from the commission's findings and vigorously disputes the recommended thirty-day suspension of his license to practice law. In December 1981 a client consulted Bauerle regarding the preparation of a partnership agreement between that client and another person. The papers were drawn for the new company, showing an effective date of December 1, 1981. Bauerle mailed the papers to his client on January 18, 1982. The client's 1981 income tax returns were then prepared by the accountant to reflect the December 1, 1981, effective date. Upon consulting with his accountant the client was dismayed to learn that a recent tax law change required that depreciation be prorated when a partnership had been in existence for less than an entire year. The client reacted to his disappointment on April 19, 1982, by sending Bauerle a paper which he called a "Quick Note" requesting that certain of these partnership documents be altered and backdated. Bauerle admits he had his secretary prepare all three documents specified in the note. Bauerle made no attempt to interview his client to learn why he wanted the documents altered or backdated. Bauerle admits that his client's requests were unusual and that he had never received similar requests from other clients. The client was later indicted, tried, and convicted in federal court on several counts of income tax evasion. Another act of considerable importance involves a trade name certificate which Bauerle prepared as a part of the original papers. The document bears signatures of the client and his partner. Acting in the capacity of notary public, Bauerle certified that both partners subscribed and swore to the document in his presence on December 1, 1981. Neither did so at any time. **OPINION HOLDS:** Bauerle's conduct was transparently unprofessional. It obviously violated fundamental ethics canons. False statements of fact contained in documents prepared for clients qualify as misconduct under the canons. The misconduct shown can only be described as inexcusable. We are not so naive as to believe an experienced lawyer could be ignorant of the client's purpose in demanding the falsified documents. It is manifestly unprofessional for a lawyer, acting as a notary public, to certify that persons who did not do so personally appeared and attested to a document. Richard C. Bauerle's license to practice law is suspended indefinitely and shall not be reinstated for six months from the date of this opinion.

No. 89-808. HUSKER NEWS CO. v. MAHASKA STATE BANK.

Appeal from the Iowa District Court for Wapello County, Dan F. Morrison, Judge. **AFFIRMED.** Considered en banc. Opinion by Neuman, J. Dissent by Larson, J.

(11 pages \$4.40)

Plaintiff Husker News Company is a wholesale distributor of magazines and paperback books. One of its employees, Walter Hopf, collected payments from customers, forged Husker's endorsement on the checks, and deposited the funds in his personal account. Husker claims it did not become aware of Hopf's wrongdoing until August 1988. The case before us involves checks written by Wigg's Country Store on its account with defendant Mahaska State Bank. Husker sued the bank pursuant to Iowa Code section 554.3419(1)(c) (1987) for conversion through payment on Hopf's forged endorsements. Mahaska answered by asserting that Husker's claim was barred by the five-year statute of limitations for "injuries to property" under Iowa Code section 614.1(4). Husker then interposed its claim that, but for Hopf's fraudulent concealment, it would have timely discovered the forged endorsements. Upon the bank's motion for summary judgment, the district court found Husker's suit untimely. Husker has appealed. **OPINION HOLDS:** The discovery rule does not apply to conversion actions under Iowa Code section 554.3419(1)(c). The plaintiff's cause of action against the Mahaska State Bank is therefore barred by the statute of limitations. **DISSENT ASSERTS:** I realize that the lapse of time here is substantial and that it might well present a practical problem to the defendant in showing that the plaintiff knew or should have known of the conversion. In such a case I believe that modification, not rejection, of the discovery rule is appropriate. As a possibility, we could hold that in cases such as this the burden of proof regarding the discovery rule could be shifted. The plaintiff would be required to show that he did not and could not in the exercise of reasonable diligence discover the claim. This would make the application of our discovery rule consistent in all tort cases, yet it would accord a degree of fairness to a defendant under circumstances such as in this case. I would reverse and remand for a factual determination, with the burden on the plaintiff to show that it did not and could not in the exercise of reasonable care have discovered the conversion.

No. 89-1291. IN RE D.J.B. AND K.B.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Dubuque County, Charles H. Jacobs, Juvenile Referee. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT AFFIRMED.** Considered by McGiverin, C.J., and Lavorato, Neuman, Snell, and Andreasen, JJ. Per curiam. (11 pages \$4.40)

The juvenile court terminated a mother's parental rights. The court of appeals reversed the termination order. Both the State and the children's guardian ad litem have applied for further review. **OPINION HOLDS:** The State proved by clear and convincing evidence that the children cannot be returned to the mother's care. The evidence was sufficient to support the juvenile court's termination order.

No. 89-1734. BROWNSBERGER v. DEP'T OF TRANSPORTATION.

Appeal from the Iowa District Court for Cass County, James M. Richardson, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Lavorato, Neuman, Snell, and Andreasen, JJ. Opinion by Neuman, J. (8 pages \$3.20)

The Department of Transportation appeals from a district court order compelling reinstatement of Brownsberger's driving privileges in accordance with Iowa Code section 321J.13(4). **OPINION HOLDS:** I. Iowa Code section 321J.13(4) permits reopening of a driver's license revocation proceeding if a parallel criminal prosecution has resulted in a holding that "the peace officer did not have reasonable grounds to believe that a violation of section 321J.2 had occurred to support a request for or to administer a chemical test." This statute operates as an exclusionary rule, barring evidence from an administrative revocation hearing, in the limited situation where an adjudication on the admissibility of evidence relevant to the implied consent law has been made in a criminal proceeding growing out of the same facts. The department must rescind any license revocation that flows from police action which is subsequently found by the court to be without reasonable grounds for belief that the OWI law has been violated. II. In the present case the DOT's revocation of Brownsberger's license must be rescinded under section 321J.13(4) because of the district court order suppressing evidence in a parallel criminal prosecution.

No. 89-1189. **STATE EX REL. IOWA DEP'T OF HUMAN SERVICES v. PIERCE.**

Appeal from the Iowa District Court for Black Hawk County, Robert E. Mahan, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Schultz, and Carter, JJ. Opinion by Harris, J. (5 pages \$2.00)

Defendants had been receiving aid to families with dependent children (AFDC) but became ineligible when one of them inherited some property. Although defendants made timely and full disclosure, the State agency, through its own error, continued to pay benefits for two months. The question is whether the agency can recover the two months' payments. The trial court held it can. Defendants appealed. **OPINION HOLDS:** The State does not cite, neither does it claim, any state or federal statutory authority for it to recover public assistance benefits paid in error. The action is based strictly on a common law theory. We hold the common law rule, providing no right for reimbursement from public assistance recipients, applies only to aid legitimately obtained and granted. Extending the rule as the Pierces urge could have disastrous consequences. We affirm the district court.

No. 89-1367. **HOOVER v. WEBB.**

Appeal from the Iowa District Court for Warren County. Darrell Goodhue, Judge. **REVERSED AND REMANDED.** Considered by McGiverin, C.J., and Harris, Larson, Schultz, and Carter, JJ. Opinion by Harris, J. (6 pages \$2.40)

In 1976, the Wallaces sold their farm to the Webbs. The farm was subject to a first mortgage held by the Federal Land Bank of Omaha. The Webbs gave the Wallaces a promissory note, secured by a second mortgage to the Wallaces. Later the Wallaces purchased a different tract of land from the Huffmans. In partial satisfaction of the purchase price for the tract they purchased from the Huffmans, the Wallaces agreed, by "quitclaim deed," to transfer their vendor's interest in the tract they had previously sold to the Webbs. The Webbs later defaulted on their obligations, including the one to the Federal Land Bank. The Federal Land Bank foreclosed on the first mortgage, thereby extinguishing the second mortgage which the Wallaces had assigned to the Huffmans. The Huffmans then brought this equitable action against the Wallaces, demanding unqualified endorsements on the Webbs' note. The trial court held for the Huffmans and the Wallaces appeal. **OPINION HOLDS:** The Huffmans signed a contract which provided merely that the Wallaces quitclaim the interest in question. This assignment to the Huffmans carefully omitted any words of endorsement. Taken together the

No. 89-1367. **HOOVER v. WEBB**(continued).

contract and assignment convey the unmistakable impression that the absence of a provision for an endorsement was deliberate. The trial court erred in ordering an unqualified endorsement from the Wallaces. The judgment of the trial court is reversed and the case remanded for entry of judgment for the defendants.

No. 89-1010. **O'TOOL v. HATHAWAY**.

Appeal from the Iowa District Court for Mills County, James M. Richardson, Judge. **AFFIRMED ON APPEAL; REVERSED AND REMANDED ON CROSS-APPEAL.** Considered by McGiverin, C.J., and Lavorato, Neuman, Snell, and Andreasen, JJ. Opinion by Neuman, J. (13 pages \$5.20)

This controversy arose when the defendants' soil conservation terrace suffered a break and spilled 40,000 gallons of water into the neighboring plaintiffs' basement. On appeal from the district court's judgment, for the plaintiffs, the defendants challenge the court's findings of liability and proximate cause. The plaintiffs cross-appeal because the trial court awarded them all their material cost but no labor expense to restore their home. **OPINION HOLDS:** I. We find no error in the court's conclusion that the Hathaways' terrace altered the surface water drainage on their property. We find no error in the district court's conclusion that it was negligent to construct a terrace of this kind on a dominant estate when harm to the servient estate was foreseeable. The proximate cause determination made by the court finds strong support in this record. No error appears. II. At trial the O'Tools submitted evidence of the material cost for reconstruction of their basement, and the labor cost for the many hours spent by themselves and their friends to clean up and repair their home following the flood. They assessed the hourly labor rates at roughly three-fourths of what their friends earn in their normal jobs. The trial court awarded full compensation for material costs but denied recovery for all labor charges, stating that the O'Tools' labor cost evidence "was pure speculation and is disregarded." The question is whether the very existence of labor costs was mere speculation. We conclude that it was not. The O'Tools are entitled as a matter of law to reasonable compensation for their own labor and that of their friends. The trial court erred to hold otherwise. We therefore remand this case for determination, on the record previously made, of the reasonable value of the labor necessary to make the repairs caused by appellants' negligence. In all other respects, the judgment of the district court is affirmed.

NO. 89-1281. STATE V. MABRY.

Appeal from the Iowa District Court for Black Hawk County, R.J. Curnan, Judge. **AFFIRMED.** Considered by Larson, P.J., and Carter, Lavorato, Neuman, and Andreasen, JJ. Opinion by Lavorato, J. (10 pages \$4.00)

In 1988 Mabry was charged with possession of a controlled substance with intent to deliver. Mabry alleged that an amendment to section 204.410 was enacted in violation of article III, section 29 of the Iowa Constitution. Iowa Code section 204.410 addresses the applicability of an accommodation offense to crimes involving illegal drug sales. Before 1980 the accommodation offense applied to all controlled substances, including cocaine. In 1980 the legislature by Senate File 2070 amended section 204.410 and limited the accommodation offense to only those drug transactions involving marijuana sales. Before and during trial Mabry argued that Senate File 2070 violated the single-subject requirement of article III, section 29 of the Iowa Constitution. According to Mabry this made the amendment void, leaving the accommodation law in existence before 1980 applicable to him. Following a bench trial, the district court found that Mabry was guilty as charged. The court rejected Mabry's single-subject argument regarding the constitutionality of Senate File 2070. Mabry appealed. **OPINION HOLDS:** We need not decide the constitutional issue. In a number of other states, courts have held that codification of the challenged legislation cures a constitutional defect in title or subject matter. We think the rule is fair to all concerned, and we adopt it. Senate File 2070 was enacted and signed by the governor in 1980. This legislation first appeared in the 1981 Code and has appeared in all of the Codes since then. No one had lodged a successful article III, section 29 challenge to the legislation before the 1981 Code was issued. So any alleged constitutional defect Mabry raises was cured long before Mabry's challenge which is now barred. For that reason we affirm the judgment of the district court.

NO. 89-1150. GARCIA V. WIBHOLM.

Appeal from the Iowa District Court for Muscatine County, Margaret S. Briles, James R. Havercamp, J.L. Burns, Edward B. deSilva Jr., and Max R. Werling, Judges. **REVERSED AND REMANDED WITH DIRECTIONS.** Considered by McGiverin, C.J., and Lavorato, Neuman, Snell, and Andreasen, JJ. Opinion by Lavorato, J. (15 pages \$6.00)

Robert Anders Wibholm was convicted and incarcerated for several crimes arising from the death of a two-year-old child. While Wibholm was incarcerated, the child's mother, Maria Garcia, filed the present wrongful death action against him. Judge Havercamp appointed an attorney to serve as guardian ad litem for Wibholm. The judge ordered the guardian ad litem to file an appearance and answer on behalf of Wibholm and do whatever was necessary to prevent an entry of a default against Wibholm. The guardian ad litem filed an answer. On the same day, the guardian ad litem filed a motion to withdraw, noting that by filing the answer he had satisfied the duties imposed by the rules on a guardian ad litem. Judge Havercamp sustained the guardian ad litem's motion to withdraw. He ruled that the guardian ad litem had satisfied his duties when the guardian filed an answer that precluded a default. The case came to trial before Judge Werling on June 26. Only Maria and her attorney were present. Before hearing evidence, the judge noted for the record that Wibholm was not present at the trial. On June 27 the court found the estate was entitled to compensatory damages of \$200,000 and punitive damages of \$200,000. The court also awarded Maria \$200,000 in compensatory damages and \$200,000 in punitive damages. Wibholm appealed. Wibholm's contention on appeal boils down to this: under the Iowa Rules of Civil Procedure a guardian ad litem has a duty to provide a meaningful defense, which may include representation at trial. In his case, Wibholm argues no such defense was provided and as a result unsubstantiated damages resulted in prejudicially high judgments against him. **OPINION HOLDS:** A judgment entered against an incarcerated person without appointment of a guardian ad litem is voidable under rule 13 if the person was actually represented by an attorney or court-appointed guardian. The judgment is void if the incarcerated person received no representation. A guardian ad litem must provide a defense that will ensure protection of the ward's interest. In some circumstances, conducting an investigation and filing a general denial to avoid a default may be enough. In other circumstances, the guardian ad litem may need to do more, even to the extent of proceeding to trial. Simply put, the guardian ad litem must do whatever the circumstances of the particular case dictate is necessary to protect the ward's interest. In these circumstances, absence of a guardian ad litem at the trial was tantamount to no representation at all. The judgments are therefore void. We reverse and remand for an appointment of a guardian ad litem who shall proceed consistently with what we have said in this opinion.

No. 89-1261. **KROBLIN REFRIGERATED XPRESS, INC. v. IOWA
INSURANCE GUARANTY ASSOCIATION.**

Appeal from the Iowa District Court for Polk County, M. C. Herrick, Senior Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Schultz, and Carter, JJ. Opinion by Schultz, J. (15 pages \$6.00)

Kroblin was incorporated in Iowa on November 1, 1950, and maintained its registered corporate offices in Waterloo. In January 1985 Kroblin moved its corporate offices from Waterloo to Tulsa, Oklahoma without changing its corporate status in Iowa. In 1985 Kroblin placed its vehicle liability insurance with an Iowa company, Carriers Insurance Company (Carriers). One of Kroblin's vehicles was involved in a multiple fatality and severe personal injury accident on August 2, 1985, which has resulted in numerous claims by victims and their families. In January 1986 the Iowa District Court for Polk County declared Carriers insolvent and ordered liquidation. Faced with this uninsured liability exposure, Kroblin filed for voluntary chapter 11 bankruptcy in Oklahoma and for coverage with the guaranty associations of Iowa, Illinois, and Oklahoma. The Iowa association denied coverage on the basis that Kroblin had not met the residency requirement. In deciding the issue of residence, the court concluded that the 1986 amendment to section 515B.2(3)(a) clarified, rather than changed, the term "resident" and that the principal place of business test was appropriate in determining residency in cases occurring prior to the amendment. The court then found that, in 1985, Kroblin's principal place of business was in Oklahoma, thus concluding that it was not a resident of Iowa. Kroblin appeals. **OPINION HOLDS:** I. We conclude that the term "resident" as applied to a corporation refers to the site of its principal place of business regardless of its charter state or the number of states in which it conducts business. The language of chapter 515B appears to recognize only one residence for an insured by requiring an insured having a claim against more than one insurance guaranty association to first seek recovery from its state of residence. Iowa Code § 515B.19(2). For the purpose of this chapter, we believe that a corporation has only one residence. We conclude that the legislature intended this residence to be its principal place of business, the site where it is most likely that the corporation secures insurance and pays premiums. II. We believe that the determination of the corporation's principal place of business must be made within the context of chapter 515B. Factors to consider in determining the principal place of business should include the location of the offices responsible for: (1) making decisions on expenditures, such as the purchase of vehicles and other insurable items; (2) controlling offices or terminals in other states; (3)

No. 89-1261. **KROBLIN REFRIGERATED XPRESS, INC. v. IOWA
INSURANCE GUARANTY ASSOCIATION (continued).**

maintaining centralized administrative records; (4) handling insurance matters; and (5) other relevant matters concerning the operation of its fleet of vehicles and the purchase of liability insurance. Based on consideration of these factors, we believe there was substantial evidence in the record to support the trial court's decision.

No. 89-1288. **ENGSTROM v. STATE.**

Appeal from the Iowa District Court for Polk County, Rodney J. Ryan, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Schultz, and Carter, JJ. Opinion by Schultz, J. (26 pages \$10.40)

Melody was born in California on July 28, 1974, to Denise and Michael Ehmke. In March 1984 the juvenile court terminated Denise Ehmke's parental rights. At the termination hearing, a Department of Human Services (department) social worker testified that the files indicated the father was dead and that the child was adoptable. Howard and Dorothy Engstrom had been accepted as potential adoptive parents and the department placed Melody with the Engstroms in November 1984. At that time the department informed the Engstroms that the parental rights of Melody's mother had been terminated and that Melody's father was deceased. In February 1985 Michael appeared in Iowa requesting custody of his daughter. The State then attempted to terminate Michael Ehmke's parental rights. The juvenile court denied this request and initiated a plan to reunite Melody with her father. The department then converted Melody's placement with the Engstroms from preadoption to foster care status. In January 1987 the department transferred custody of Melody from the department to her father. In May 1987 the plaintiffs commenced this action in district court after complying with the notice procedures of section 25A.5 of the State Tort Claims Act. The district court granted the State's motion for summary judgment and dismissed the case. It concluded that all of plaintiffs' claims arose out of misrepresentation and the State and its employees are immune from suit for misrepresentation under an exception to the State Tort Claims Act. The plaintiffs appeal. They contend that the exception to the State Tort Claims Act is inapplicable because their action is not confined to misrepresentation. **OPINION HOLDS:** I. We hold defendants owed no duty of implied good faith to establish the father's status when they entered the adoption placement contract with defendants. II. We conclude that preadoptive parents do not have a right to an action

No. 89-1288. ENGSTROM v. STATE (continued).

implied out of the statutory violations alleged in this case. We conclude that the legislature did not intend to create this private cause of action. We also believe that public policy reasons do not favor an action by preadoptive parents when an adoption goes sour. We hold that preadoptive parents should not have an action for negligence arising out of placement of a child later determined to be unadoptable. We refuse to recognize that the present cause of action is an actionable social worker malpractice claim. III. We hold that plaintiffs' theory of recovery based on a violation of due process must fail because they did not suffer deprivation of a recognized liberty or property interest. IV. The district court did not err in dismissing the tort action for infliction of severe emotional distress because the conduct relied upon by the plaintiffs in their resistance to summary judgment does not rise to the level of outrageous conduct.

No. 89-1391. STATE v. GARR.

Appeal from the Iowa District Court for Appanoose County, James D. Jenkins, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Schultz, and Carter, JJ. Opinion by Schultz, J. (8 pages \$3.20)

The State charged defendant, a juvenile, with a delinquent offense of second-degree theft and requested the juvenile court to waive jurisdiction pursuant to Iowa Code section 232.45 (1987), so that he could be tried as an adult. The juvenile referee waived jurisdiction. The State filed a trial information charging the defendant with second-degree theft in violation of Iowa Code sections 714.1(1) and 714.2(2) (1987). Later, the State applied to amend the information to charge defendant with the crime of theft in the first degree. Following a hearing, the court granted the State's application to amend. A jury convicted defendant of first-degree theft, and defendant has appealed. I. **OPINION HOLDS:** I. The trial court correctly submitted the issue of theft to the jury because there was substantial evidence for all elements of theft. II. The trial court had jurisdiction to increase the degree of the offense without a further waiver hearing by the juvenile court.

No. 89-1251. ANDRESEN v. EMPLOYERS MUTUAL CASUALTY CO.

Appeal from the Iowa District Court for Scott County, John A. Nahra, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Schultz and Carter, JJ. Opinion by McGiverin, C.J. (11 pages \$4.40)

Andresen was employed by First Bank. He was injured in a two-car collision while driving his own automobile in the course of his employment. The other driver was at fault and, as it turned out, underinsured. Employers Mutual Casualty Company insures First Bank under a commercial auto policy which includes underinsured motorist coverage. The policy includes a hired autos endorsement which provides coverage for all autos hired or borrowed by First Bank. Andresen brought this action in equity for a declaratory judgment as to whether he can recover for his injuries from Employers under the underinsured motorist coverage of the commercial auto policy issued to First Bank. The district court ruled that under the terms of the policy, Andresen is entitled to recover. Employers filed this appeal. **OPINION HOLDS:** We hold Andresen's auto was a borrowed auto within the meaning of the hired auto endorsement. As such, we conclude that the auto First Bank borrowed from Andresen was a covered auto under the policy.

NO. 90-565. COMMITTEE ON PROFESSIONAL ETHICS & CONDUCT V. HEARITY.

On review of the report of the Grievance Commission. **ATTORNEY REPRIMANDED.** Considered by McGiverin, C.J., and Lavorato, Neuman, Snell, and Andreasen, JJ. Opinion by Lavorato, J. (4 pages \$1.60)

The actions that form the basis of the present complaint against Hearity revolve around two defaults he took against the defendants and his conduct in resisting enforcement of a settlement agreement reached in the case. See Hearity v. Iowa Dist. Ct., 440 N.W.2d 860 (Iowa 1989). Briefly, Hearity took several defaults after he said he would not and in contravention of a statute. Hearity also aided and abetted his clients in reneging on a settlement agreement because the clients were upset about publicity given to the agreement. **OPINION HOLDS:** Upon our review, we agree with the commission that there is clear and convincing evidence Hearity violated the Iowa Code of Professional Responsibility. We agree with the commission for its recommended sanction of reprimand.

NO. 89-939. SMITH v. BOARD OF ADJUSTMENT OF THE CITY OF CEDAR RAPIDS.

Appeal from the Iowa District Court for Linn County, Paul J. Kilburg, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Schultz, and Carter, JJ. Opinion by Carter, J. (11 pages \$4.40)

This dispute involves a tiny lot with a twenty-one-foot street frontage. The small building on this lot had been used almost continuously for commercial purposes from 1890 until 1985. Until sometime in 1980, this commercial usage had been consistent with existing zoning ordinances. In 1980, however, the property was rezoned as an R-3 residential district. At this time, the property was being used as a hairstyling salon, a use not permitted in an R-3 zoning district. After the 1980 rezoning of the property, it continued to be used as a hairstyling salon by virtue of the nonconforming use exemption contained in Cedar Rapids Municipal Code section 32.15. On January 9, 1984, plaintiff leased the property to Haldy's, Inc., for a period of two years. Haldy's, Inc., continued to operate the hairstyling salon located on the property until sometime in April of 1985. At this time, the building on the property was abandoned by the tenant although the rent for the term of the lease continued to be paid through January 9, 1986. The zoning administrator concluded that the exemption had been extinguished by nonuse. On January 12, 1988, plaintiff asked the zoning administrator to issue a certificate showing a legal nonconforming use exemption existed for this lot. That request was denied. The denial letters referred to Cedar Rapids Municipal Code section 32.15(G) and recited that the nonconforming use of the building had been discontinued for more than twelve months. Plaintiff filed an appeal to the board of adjustment. The board after considering his appeal denied the relief which he requested. On March 4, 1988, plaintiff brought a certiorari action as authorized by Iowa Code section 414.15 (1989). He alleged that the zoning administrator had erred in determining the time in which the nonconforming use exemption would expire as a result of discontinuance of that use. In denying plaintiff any relief from the action of the board of adjustment, the district court concluded that the nonconforming use exemption had been lost as a result of the nonuse of the property for commercial purposes from April 1985 until the time of the board of adjustment hearing on February 8, 1988. Plaintiff appealed. **OPINION HOLDS:** We are persuaded by the views expressed in State ex rel. Peterson v. Burt, 42 Wis. 2d 284, 167 N.W.2d 207 (1969), that, in dealing with the perpetuation of nonconforming uses, it is permissible for city councils to draft ordinances which dispense with

NO. 89-939. SMITH v. BOARD OF ADJUSTMENT OF THE CITY OF CEDAR RAPIDS (continued).

subjective intent. Such ordinances may effectively extinguish nonconforming uses based solely on discontinuance of that use for a specified period of time. We qualify the foregoing conclusion by expressing our belief that even under ordinances which dispense with subjective intent there is some room to perpetuate a nonconforming use in situations where the period of discontinuance takes place under circumstances beyond the property owner's control. Whether a tenant's control of leased premises is a circumstance beyond the landlord's control for purposes of this qualification is a close question. We need not answer it in this case. We must conclude, as did the district court, that, even if we accept plaintiff's theory that the nonconforming use exemption did not expire until one year after the termination of the lease, the exemption would still have expired more than a year before the board of adjustment hearing.

NO. 88-1654. TONEY v. CASEY'S GENERAL STORES, INC.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Story County, Newt Draheim, Judge. **DECISION OF COURT OF APPEALS AFFIRMED; JUDGMENT OF DISTRICT COURT REVERSED.** Considered by McGiverin, C.J., and Harris, Larson, Schultz, and Carter, JJ. Opinion by Larson, J. (12 pages \$4.80)

Casey's General Stores, Inc., and Frohwein Stores entered into a franchise agreement. In 1976 Esther Toney was hired by Larry Frohwein, president of Frohwein Stores, Inc., to manage its store in Colo, Iowa. In 1979, Frohwein decided to adopt a revised management fee structure along the lines suggested by Casey's, and Frohwein asked Casey's to handle the contract negotiations with their store managers. When a revised contract was presented to Toney, she refused to sign it, even though Frohwein and Casey's made it clear that she would be fired if she did not. After she was fired, Toney brought this suit against Frohwein's stores on a theory of a breach of her employment contract and Casey's on a theory of interference with that contract. A jury trial resulted in a judgment against Casey's for \$76,460 actual and \$100,000 punitive damages. The court of appeals reversed on the ground that there was no substantial evidence of an "improper" interference by Casey's. This further review followed. **OPINION HOLDS:** I. We believe it is clear that, in firing Toney, Casey's was in fact acting as an agent for Frohwein. II. We believe that there must be substantial evidence of a predominant motive on the part of Casey's to terminate the employment of Toney for improper reasons. The only improper motivation which could be attributed to Casey's

NO. 88-1654. TONEY v. CASEY'S GENERAL STORES, INC.
(continued).

under the evidence would be that it was attempting to standardize all of its managers' contracts in order to expedite its bookkeeping procedures. We agree with the court of appeals that substantial evidence does not support a finding of improper interference on the part of Casey's. Accordingly, we affirm the court of appeals and reverse the judgment of the district court, remanding for dismissal of the action.

NO. 88-966. STATE v. MYERS.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Linn County, Lynne E. Brady, Judge. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Schultz, and Carter, JJ. Opinion by Carter, J. (7 pages \$2.80)

Defendant, Yvette Marie Myers, appeals from a conviction of second-degree murder, contending that a hearing should have been held on her competency to stand trial. The court of appeals found that information which came to the trial court's attention during the trial raised serious questions concerning defendant's competency. Based on this finding, that court concluded that the trial court erred in not ordering a competency hearing sua sponte. It reversed defendant's conviction and granted a new trial. We granted further review of the court of appeals decision. **OPINION HOLDS:** The claim on appeal does not involve whether defendant was in fact competent to stand trial at the time the trial occurred. Rather, the issue presented on appeal is whether, under Iowa Code section 812.3 (1989), the import of the information which came to the trial court's attention immediately prior to and during the trial created enough doubt as to defendant's competency that an evidentiary hearing was required. Although we are in no disagreement with the court of appeals' recitation of the salient facts, we do disagree with its characterization of those facts. Considering the applicable factors, together with the limited nature of the trial which took place and the colloquy in which the court personally addressed the defendant with respect to her understanding of the jury trial waiver, we are unable to conclude that the circumstances, either individually or in combination, raised enough doubt concerning defendant's competency that the trial court was required to order a competency hearing sua sponte. We have considered all arguments presented and find no basis for disturbing defendant's conviction on the grounds which have been asserted. The decision of the court of appeals is vacated. The judgment of the district court is affirmed.

NO. 89-1237. POWER EQUIPMENT, INC. v. TSCHIGGFRIE.

Appeal from the Iowa District Court for Dubuque County, Robert J. Curnan, Judge. **REVERSED AND REMANDED.** Considered by Larson, P.J., and Carter, Lavorato, Neuman, and Andreasen, JJ. Opinion by Carter, J. (11 pages \$4.40)

For several years, Tschiggfrie purchased parts and services from Power Equipment, Inc., for use in his excavating business. These purchases were on credit. To pick the items up, Tschiggfrie's employees ordinarily, but not always, signed Power Equipment's copy of an invoice form. The forms normally specified a finance charge. Power Equipment commenced the present action in March 1989 for the alleged unpaid balance due from defendant on the account. Following trial, the district court determined the balance due for the invoice cost of goods and services. The court determined that plaintiff was not entitled to collect any finance charges except at the rate specified in Iowa Code section 535.2(1)(f) (1989), commencing six months after the latest transaction shown in the account. Plaintiff has appealed, contending that it is entitled to a more substantial recovery of interest or finance charges. **OPINION HOLDS:** I. Iowa Code section 535.2(2)(a)(5) permits an agreement concerning interest and finance charges with respect to the type of transactions involved in the present dispute. Whether such an agreement was established, however, was an issue of fact for the trial court. Although an omitted ruling on an issue of law may sometimes be cured by this court's ruling on that issue, this is not possible with respect to an omitted finding of fact in a law-tried case. As the trial court failed to decide a determinative factual issue, we remand this case to the district court for further proceedings. II. With respect to any of the transactions for which the trial court on remand fails to find a section 535.2(2)(a)(5) agreement, plaintiff's right to impose and collect a finance charge shall be determined in accordance with Iowa Code section 535.11 (1989). If the trial court's findings on remand place the case under section 535.11 and the court further finds that a valid section 535.11(2)(b) notice has been established, plaintiff is entitled to recover a finance charge consistent with the provisions contained in that notice but not to exceed the maximum amount permitted under section 535.11(3) or (4), whichever is deemed applicable. As to transactions, if any, for which the trial court finds that there was neither a written agreement under section 535.2(2)(a)(5) nor a valid notice under section 535.11(2)(b), the court shall limit the recovery of a finance charge on those transactions to interest on the aggregate of such items at the rate and for the time provided in section 535.2(1)(f).

NO. 89-1289. PETERSON v. SCHWERTLEY.

Appeal from the Iowa District Court for Harrison County, Leo F. Connolly, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Schultz, and Carter, JJ. Opinion by Carter, J. (8 pages \$3.20)

Lonny Peterson was injured in a diving accident while trespassing on land owned by Robert Schwertley. Peterson sued Schwertley to recover for his injuries. The district court granted Schwertley a summary judgment, and Peterson has appealed. **OPINION HOLDS:** The district court correctly held that any duty otherwise owed Peterson by Schwertley was abrogated by the recreational use protection created under Iowa Code sections 111C.3 and 111C.4 (1989).

NO. 89-1267. STATE v. BRAUN.

Appeal from the Iowa District Court for Tama County, Thomas L. Koehler, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Schultz, and Carter, JJ. Opinion by Larson, J. (6 pages \$2.40)

Richard Braun pleaded guilty to charges of terrorism and carrying a concealed weapon. He was sentenced to serve terms not to exceed five years on the terrorism charge and two years on the weapons charge. The five-year sentence was suspended, but he was ordered to serve the two-year sentence. Approximately a year after sentencing, Braun requested that the district court provide him with a copy of the presentence investigation report which had been used at sentencing, pursuant to Iowa Code section 901.4 (1987). The court refused, and Braun appealed. **OPINION HOLDS:** I. Braun's time to appeal from his criminal convictions expired some eleven months before he filed the present application. The criminal case had, therefore, expired. Under these circumstances, we believe the district court would have been justified in dismissing the application for want of jurisdiction. II. Even if Braun's application were considered to be a separate action from the criminal case, thereby avoiding the jurisdictional problem, we nonetheless believe the court acted well within its discretion in denying the application on its merits. Under Iowa Code section 901.4, disclosure of the presentence investigation report is mandatory only to the extent that inspection of the report must be permitted prior to sentencing. Under section 901.4, the presentence report is confidential after sentencing, and it "shall be sealed and opened only on order of the court." This language suggests that it is discretionary whether the report will be released. We believe release necessarily requires some showing of need. In the present case, the defendant has not said that he needs the report for a postconviction relief case, or for any other reason. He only stated that he would "like" to have it.

NO. 89-150. SCHILDBERG v. SCHILDBERG.

Appeal from the Iowa District Court for Adair County, James Brown, Judge. **AFFIRMED ON APPEAL; REVERSED ON CROSS-APPEAL.** Considered by Larson, P.J., and Carter, Lavorato, Neuman, and Andreasen, JJ. Opinion by Larson, J.
(20 pages \$8.00)

The beneficiaries of a family trust requested that the court remove the trustee on grounds that he had failed to provide annual accounting to the beneficiaries and had created such a climate of acrimony between the trustee and beneficiaries that the effectiveness of the trust, and the trustee's ability to act on behalf of the beneficiaries, were seriously impaired. The district court denied the application to remove the trustee but did order that a cotrustee be appointed. The beneficiaries appealed, complaining that the court erred in refusing to remove the trustee. The trustee cross-appealed, claiming that the court erred in appointing a cotrustee. **OPINION HOLDS:** I. We hold that the district court correctly refused to remove Dennis Schildberg as trustee. Removal is not justified here when the overall performance of the trustee in the interest of the trust outweighs a breach of the trust agreement and the overall interests of the beneficiaries will be better served by having the trustee continue. We also find that there is not such a conflict of interest in having Dennis remain as trustee as to require his removal. Finally, while there is present friction among the family members, it has not seriously interfered with the effectiveness of the trust. We conclude, as did the district court, that sufficient grounds for removal were not established. II. Comment e to the Restatement (Second) of Trusts section 108 provides for the appointment of additional trustees even if not provided for in the trust. The cases interpreting section 108 comment e suggest that the discretion conferred upon the court must be exercised only in rare circumstances. In the present case, we find no evidence of such exceptional nature as to disregard the will of the settlor in connection with the number and identity of the trustees. We conclude that the appointment of a cotrustee was beyond the court's discretion.

NO. 89-1196. LEUCHTENMACHER v. FARM BUREAU MUTUAL INS. CO.

Appeal from the Iowa District Court for Clayton County, William G. Klotzbach, Judge. **REVERSED AND REMANDED.** Considered by Larson, P.J., and Carter, Lavorato, Neuman, and Andreasen, JJ. Opinion by Larson, J. (6 pages \$2.40)

In April 1987, Leuchtenmacher was killed in a collision with a vehicle operated by Odegard. Alice's estate sued both Odegard and Farm Bureau Mutual Insurance Company, Alice's own insurance carrier. The jury returned a substantial verdict. The court then entered a judgment against Farm Bureau for underinsured motorist coverage less Farm Bureau's previous payment for medical expenses. Alice's estate filed this lawsuit against Farm Bureau alleging that it had acted in bad faith by denying the estate's claim for underinsured motorist benefits, thus forcing the estate to go to trial. The district court sustained Farm Bureau's motion to dismiss based on claim preclusion, concluding that the estate improperly split its claim because the damages sought in both suits arose from a single wrongful act. The estate appealed. **OPINION HOLDS:** The question of whether the estate's "bad-faith" case was precluded by the prior suit depends on whether the cases arose out of the same facts. We cannot conclude as a matter of law that they did. Accordingly, we reverse and remand for further proceedings consistent with this opinion.

NO. 89-1389. TRI CITY EQUIP. CO. v. MODERN REAL ESTATE INVESTMENTS, LTD.

Appeal from the Iowa District Court for Johnson County, William L. Thomas, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Schultz, and Carter, JJ. Opinion by Larson, J. (6 pages \$2.40)

In July 1988, Tri City Equipment Co. obtained a judgment against Ron Farkas and several other defendants. In February 1989, Farkas gave \$5000 to his attorney, David P. Poula, to be retained in Poula's trust account pursuant to a fee contract pertaining to matters unrelated to the Tri City case. In January 1989, Tri City levied on its judgment against Farkas and garnished the funds being held by attorney Poula. Poula, who unsuccessfully resisted the judgment creditor's claim of priority in district court, appealed to this court, claiming priority under Iowa Code section 602.10116 and the Uniform Commercial Code, article 9. **OPINION HOLDS:** We agree with the district court that Poula's lien did not attach for services to be rendered after the levy on the judgment was made. In addition, we find that article 9 of the U.C.C. does not apply to this situation. We believe the court properly rejected Poula's arguments and awarded priority over the funds to Tri City.

No. 89-1083. COWAN v. FLANNERY.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Plymouth County, Richard J. Vipond, Judge. **DECISION OF COURT OF APPEALS AFFIRMED; DISTRICT COURT JUDGMENT REVERSED AND REMANDED WITH INSTRUCTIONS.** Considered by McGiverin, C.J., and Lavorato, Neuman, Snell, and Andreasen, JJ. Opinion by Andreasen, J. (13 pages \$5.20)

In this comparative fault case arising from an auto accident, the jury awarded \$21,220 in damages for medical expenses, both past and future, but did not allow damages for pain and suffering. Plaintiff's motion for new trial based upon an inadequate award was denied by the trial court. On appeal, the court of appeals found the district court had abused its discretion and reversed the court's judgment. The defendants have applied for further review. **OPINION HOLDS:** I. Under Iowa Code section 668.13(1)(4), interest awarded for future damages accrues from the date of the entry of the judgment; interest awarded for past damages accrues from the date of the commencement of the action. As a consequence of this statutory provision, adopted in 1987, the jury must identify the amount of the award given for future damages. II. It is illogical to award past and future medical expense incurred to relieve headache, neck and back pain and then allow nothing for such physical and mental pain and suffering. Under the circumstances of this case, a special verdict award of nothing for pain and suffering is inconsistent and unsupported by evidence. III. There is no evidence in the record that the jury's determination of fault was compromised or affected by the evidence of damages. Therefore, the district court judgment is reversed and remanded for new trial upon the issues of damages only, with all items of damages to be determined by the jury.

**No. 89-1863. HEARST CORPORATION v. IOWA DEPARTMENT
OF REVENUE AND FINANCE.**

Appeal from the Iowa District Court for Polk County, Ray A. Fenton, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Lavorato, Neuman, Snell, and Andreasen, JJ. Opinion by Snell, J. (33 pages \$13.20)

The Hearst Corporation appeals from an adverse ruling of the Iowa District Court for Polk County. The district court affirmed the decision of the Iowa Department of Revenue and Finance holding that the taxed publications of Hearst are not "newspapers" as that undefined term is used in Iowa Code section 422.45(9)(1977) and, therefore, do not qualify for an exemption to Iowa's sales and use tax. **OPINION HOLDS:** I. We agree that the administrative agency had substantial evidence to support its finding based on these facts and the ordinary meaning of these terms that the Hearst publications are properly classified as "magazines" or "periodicals" and not "newspapers." Accordingly, we hold the Hearst publications do not qualify for the Iowa tax exemption. II. Because the Iowa law does not discriminate between media sources of the same type which would subject only a handful of publications to the state sales and use tax, and because the Iowa exemption is not impermissibly directed at a publication's content, the Iowa tax scheme which exempts "newspapers," but not "magazines" or "periodicals," from the generally-applicable Iowa retail sales and use tax is not the type of suspect tax that violates the first amendment. The decision of the district court is therefore affirmed on this ground. III. We find that the rational basis standard is the proper constitutional test to be applied in this case, and because the Iowa tax law satisfies that standard, Hearst's equal protection claim must be rejected. IV. The department was correct in finding that the term "newspaper" as used in Iowa Code section 422.45(9)(1977) is not so vague, indefinite, and uncertain, as to deprive Hearst of its liberty or property interests without due process of law. V. There has been no showing that the "newspaper" tax exemption is at all based on the protection of local business, or that the tax on magazines places an undue burden on interstate commerce. VI. We affirm the district court decision denying Hearst its reasonable attorney fees pursuant to 42 U.S. Code sections 1983 and 1988. VII. Hearst has not established reasonable cause in this case in order to exempt it from the penalty for failure to timely collect and remit use tax.

No. 89-1200. BOARD OF DENTAL EXAMINERS v. HUFFORD.

Appeal from the Iowa District Court for Polk County, Rodney J. Ryan, Judge. **REVERSED.** Considered by McGiverin, C.J., and Harris, Schultz, Neuman, and Snell, JJ. Opinion by Snell, J. (20 pages \$8.00)

The board of dental examiners suspended Hufford's license to practice dentistry because Hufford allegedly performed an unwarranted full-mouth extraction on a patient after making unsupported representations that removal of the patient's preexisting mercury fillings would improve the symptoms of her multiple sclerosis. Upon Hufford's petition for judicial review, the district court overturned the action of the board of dental examiners. The board has appealed. **OPINION HOLDS:** I. The board's disciplinary action is supported by substantial evidence. II. There is no merit to Hufford's suggestion that an assistant attorney general was placed in an improper dual capacity of advocating for the board and prosecuting the case. III. Nor is there any merit to Hufford's suggestion that the board itself unconstitutionally acted as both decision maker and prosecutor. IV. The board applied correct legal standards in its decision to discipline Hufford. The board did not err in relying on a single incident, in light of the severity of the incident. Moreover, the board properly determined that Hufford had committed both "willful" and "gross" malpractice. V. Hufford cannot benefit from the patient's supposed right of privacy to choose unconventional medical treatment. At any rate, there is no right of privacy to seek unconventional medical treatment that is harmful to the patient and flows from the patient's being uninformed about the true effects of the treatment. VI. There is overwhelming evidence to support the board's finding that the patient's consent was uninformed. VII. Our review convinces us that all of the indicia of fraud were found by the board, either explicitly or implicitly, and are thoroughly substantiated by clear, satisfactory and convincing evidence. VIII. There is no merit to Hufford's contention that the board's sanctions were unauthorized because the board had made no findings as to the appropriateness of sanctions.

No. 89-1525. VEACH v. FARMERS INSURANCE CO.

Appeal from the Iowa District Court for Polk County, Arthur E. Gamble, Judge. **DISTRICT COURT JUDGMENT AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.** Considered by McGiverin, C.J., and Lavorato, Neuman, Snell, and Andreasen, JJ. Opinion by Andreasen, J. (9 pages \$3.60)

In 1987, Greg Veach, while riding his motorcycle, was seriously injured by an underinsured motorist. The other motorist paid \$100,000 to him. By stipulation the parties agreed Veach sustained at least \$175,000 in damages. Veach's motorcycle was covered by a policy issued to him by a member of the Farmers Insurance Group of Companies. Veach received \$25,000 of underinsured motorist coverage from this policy. Veach was also an "insured" under a policy issued to his mother, Janice Veach, by another member of the Farmers Insurance Group. The underinsured motorist limits of this policy were \$50,000 per person, per occurrence. The policy excluded coverage if the injured party was occupying a vehicle not owned but covered by other insurance. The policy also contained an "other insurance" clause. Veach brought this action against the insurer based upon its failure to make payments required by the underinsured motorist provisions issued to his mother. The district court held the exclusion invalid and the "other insurance" clause valid. The court accordingly granted Veach summary judgment of \$25,000. The court also awarded Veach pre-filing and post-filing interest. Farmers appealed the court's ruling on the exclusion and the award of pre-filing interest. Veach appealed the ruling on the "other insurance" clause. **OPINION HOLDS:** I. The policy issued to Janice Veach purports to exclude from coverage any vehicle not owned by the named insured which had underinsured motorist coverage under another policy. Because the "not-owned-but-insured" clause in this case frustrates the purpose of underinsured motorist coverage and because it is contrary to "common sense and the consuming public's general understanding of coverage under these circumstances," we hold the exclusion is invalid. II. The "other insurance" clause has no application to the acts of this case. Greg Veach was not the named insured of the policy issued to his mother. The district court judgment for \$25,000 must be reversed and judgment entered for \$50,000. III. The interest allowed is limited to the statutory ten percent allowed on the amount of the judgment accruing from the date of the commencement of the action. We vacate the award of pre-filing interest and remand to the district court for entry of judgment as provided in this opinion and for interest from the date of the commencement of the action.

No. 89-1525. HERNANDEZ v. FARMERS INSURANCE CO.

Appeal from the Iowa District Court for Woodbury County, Terry L. Huitink, Judge. **REVERSED AND REMANDED.** Considered by McGiverin, C.J., and Lavorato, Neuman, Snell, and Andreasen, JJ. Opinion by Andreasen, J.

(8 pages \$3.20)

Steven Hernandez was severely injured while a passenger in a vehicle driven by an underinsured motorist. At the time of the accident, Steven Hernandez was the named insured in a policy issued to him by Farmers Insurance Company, Inc. (Farmers). The underinsured motorist coverage under this policy had a limit of \$25,000 per person. Steven Hernandez was a resident of his mother's household. As such he was an "insured person" under two policies issued by Farmers to his mother, Jane Hernandez. The underinsured motorist limits for each of these policies was \$100,000. Each of the three policies issued to the Hernandezes contained, under the heading "Other Insurance," the following clause: "If any applicable insurance other than this policy is issued to you by us or any other member company of the Farmers Insurance Group of Companies, the total amount payable among all such policies shall not exceed the limits provided by the single policy with the highest limits of liability." Citing this clause, Farmers paid \$25,000 to Steven Hernandez as the named insured of the policy issued to him, and \$75,000 as an "insured person" under the policies issued to his mother. The Hernandezes filed an action at law against Farmers claiming breach of contract, misrepresentation, and bad faith. Farmers filed a motion for partial summary judgment on the contract claim. The court sustained the motion and the Hernandezes appealed. **OPINION HOLDS:** We conclude the enforcement of the anti-stacking provisions contained in the policies issued by Farmers would frustrate the protection given to insureds under section 516A.1. To enforce the provision would not avoid duplication but would deprive the insured of full compensation under the policy. As a matter of law, Farmers was not entitled to a partial summary judgment and the judgment must be reversed.

IOWA ADMINISTRATIVE BULLETIN

**Iowa State Printing Division
Grimes State Office Building
Des Moines, Iowa 50319**

Bulk Rate
U.S. Postage
PAID
Des Moines, Iowa
Permit No. 1195

State Law Library
Capitol
LOCAL

3B/F
